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Federal Register

Friday
February 21, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; 9 am.

WHERE: Room 1612, Federal Building, 1520 Market Street, St. Louis, MO.

CALL: Dolores O'Guin, St. Louis Federal Information Center, 314-425-4109, for reservations.

WASHINGTON, DC

WHEN: March 20; 9 am and 1 pm. (identical sessions)

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW, Washington, DC

CALL: Ruth Reedy, 202-523-5239, for reservations.

DENVER, CO

WHEN: March 24; 9 am

WHERE: Room 239, Federal Building, 1961 Stout Street, Denver, CO.

CALL: Elizabeth Stout, Denver Federal Information Center, 303-236-7181, for reservations.

DALLAS, TX

WHEN: April 23; 1:30 pm.

WHERE: Room 7A23, Earl Cabell Federal Building, 1100 Commerce St Dallas, TX.

CALL: **local numbers:**

Ft. Worth	817-334-3624
Dallas	214-767-8585
Houston	713-229-2552
Austin	512-472-5494
San Antonio	512-224-4471

for reservations.

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Separate Parts In This Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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Friday, February 21, 1986

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 85-393]

Ethylene Dibromide; Mangoes

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the regulations captioned "Subpart-Fruits and Vegetables" by adding provisions to allow for fumigation with ethylene dibromide (EDB) as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico. This action is necessary in order to provide a mechanism for continuing to allow mangoes to be imported into the United States from the specified places.

EFFECTIVE DATE: The effective date of this document is February 14, 1986. Written comments concerning this interim rule must be received on or before April 22, 1986.

ADDRESSES: Written comments concerning this document should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, USDA, APHIS, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket No. 85-393. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: James Fons, Acting Senior Staff Officer, Technology Analysis and Development Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 671, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8896.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables" (contained in 7 CFR 319.56 *et seq.* and referred to below as the regulations) regulate the importation of fruits and vegetables into the United States.

Prior to September 17, 1985, regulations in § 319.56-2h provided for fumigation with ethylene dibromide (EDB) in the country of origin as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, and Brazil. Also, prior to September 17, 1985, the regulations in § 319.56-2i contained provisions that provided for fumigation with EDB in Mexico as a condition-of-entry treatment for the importation of mangoes into the United States from Mexico. A document published in the **Federal Register** on September 17, 1985, removed all of these provisions concerning the fumigation of mangoes (50 FR 37637-37638).

The provisions concerning the fumigation of mangoes were removed solely because of action taken by the Environmental Protection Agency (EPA). Prior to September 1, 1985, a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes had been established by EPA for the use of EDB in foreign countries as a fumigant after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture. However, effective September 1, 1985, the tolerance expired, and consequently the tolerance for residues of EDB per se in or on mangoes was zero (see 50 FR 2546-2550). There was no basis for retaining the provisions for fumigation of mangoes since EDB cannot be used as a fumigant for mangoes without leaving residues.

In a document published in the **Federal Register** on February 14, 1986, EPA changed its regulations to again allow a tolerance of .03 ppm (in the edible pulp) for residues of EDB per se in or on mangoes if the fumigant was applied in foreign countries after harvest in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U.S. Department of Agriculture.

Under these circumstances, this document amends the regulations to put back in the regulations all of the fumigation provisions referred to above that were deleted from the regulations by the document of September 17, 1985.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without prior opportunity for a public comment period of this interim rule. It is necessary to make this interim rule effective immediately in order to provide a mechanism for continuing to allow mangoes to be imported into the United States from Central America, the West Indies, Brazil, and Mexico. Importers currently are ready to import mangoes under the provisions of this interim rule.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective less than 30 days after publication of this document in the **Federal Register.**

Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Executive Order 12291 and Regulatory Flexibility Act

The interim rule is issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete

with foreign-based enterprises in domestic or export markets.

As noted above, the provisions concerning the fumigation of mangoes were removed solely because of action taken by EPA. Since EPA has changed its regulations to reestablish the previous provisions allowing residues of EDB in or on mangoes, this document reestablishes the provisions allowing fumigation with EDB as a condition-of-entry treatment for the importation of mangoes into the United States from Central America, the West Indies, Brazil, and Mexico. This action allows mangoes from the specified places to continue to be imported into the United States. The importation of mangoes under the interim rule would not be the primary business activity of any business in the United States.

Also, under the circumstances referred to above, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Mangoes, Plant pests, Plant diseases, Plants (agriculture), Quarantine, Transportation.

PART 319—FOREIGN QUARANTINE NOTICES

Under the circumstances referred to above, 7 CFR Part 319 is amended to read as follows:

1. The authority citation for 7 CFR Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51 and 371.2(c).

2. "Subpart—Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) is amended by adding new §§ 319.56–2h and 319.56–2i to read as follows:

§ 319.56–2h Administrative instructions concerning handling and treatment of mangoes from Central America, the West Indies and Brazil.

(a) *Condition of entry.* Fumigation with ethylene dibromide, in accordance with the procedures described in this section, is hereby authorized as a condition-of-entry treatment for mangoes from Central America, the West Indies, and Brazil in connection with the issuance of permits for entry under § 319.56–2.

(b)(1) *Central America.* As used in this section, the term "Central America" means the southern portion of North America from the southern boundary of Mexico to South America, including Guatemala, Belize, Honduras, El Salvador, Nicaragua, Costa Rica, and Panama.

(2) *West Indies.* As used in this section, the term "West Indies" means the foreign islands lying between North and South America, the Caribbean Sea, and the Atlantic Ocean, including, among others, Cuba, Jamaica, Hispaniola, and the Bahama, Leeward, and Windward Islands, but excluding the chain of islands adjacent and parallel to the north coast of South America (the largest of which are Aruba, Curacao, Bonaire, Tortuga, Margarita, Trinidad and Tobago).

(c) *Ports of entry.* Mangoes certified by an inspector as having received treatment in the country of origin under supervision of an inspector, as provided in paragraphs (d) and (e) of this section, may be admitted at any port in the United States.

(d) *Approved fumigation.* (1) The approved fumigation shall consist of fumigation with ethylene dibromide for 2 hours at normal atmospheric pressure, in a tight fumigation chamber which has been approved by an inspector as meeting the criteria specified in this paragraph. The fumigation chamber is acceptable as tight when an open-arm manometer indicates a positive pressure recession from 25 mm. to no less than 2.5 mm. in the open arm in a period of no less than 22 seconds. The ethylene dibromide must be applied as a liquid and volatilized within the sealed fumigation chamber in an electrically heated vaporizing pan. The electrically heated vaporizing pan shall be controlled by a switch outside the chamber and shall be equipped with a signal light to indicate when the current is on or off. Fifteen minutes after all liquid ethylene dibromide has been injected into the vaporizing pan inside the fumigation chamber, the electric current for the vaporizing pan must be turned off, and the 2-hour period of exposure shall begin. The gas shall be circulated within the chamber continuously for the 2-hour period by electric fans or blowers. The fans or blowers must be of a capacity to circulate the entire air mass within the chamber in 1 minute. Post-treatment aeration is required by forced circulation of air in the fumigation chamber for 30 minutes following treatment.

(2)(i) Mangoes treated because of fruit flies of the genus *Anastrepha* from the countries of the West Indies and Central America, except Bermuda, Costa Rica, Nicaragua, and Panama, shall be fumigated in accordance with the following schedule:

Dosage of EDB in ounces per 1,000 ft³ per 2 hours	Fruit load in chamber [1]		
	50 °F to 60 °F	Above 60 °F to 70 °F	70 °F or above
	oz.	oz.	oz.
25 pct or less	12	10	8
More than 25 pct to 50 pct	14	12	10
50 pct to 80 pct	16	14	12

[1] Percent of chamber capacity.

The temperature shall be that of the fruit. Cubic feet of space shall be that of the unloaded chamber.

(ii) Mangoes treated because of fruit flies of the genus *Anastrepha* and the Mediterranean fruit fly (*Ceratitis capitata* Wiedemann) from the countries of Bermuda, Costa Rica, Nicaragua, and Panama shall be fumigated in accordance with the following schedule:

Dosage of EDB in ounces per 1,000 ft³ per 2 hours	Fruit load in chamber [1]	
	60 °F to 70 °F	70 °F or above
	oz.	oz.
25 pct or less	10	8
More than 25 pct to 50 pct	12	10
50 pct to 80 pct	14	12

[1] Percent of chamber capacity.

The temperature shall be that of the fruit. Cubic feet of space shall be that of the unloaded chamber.

(iii) Mangoes from Brazil, treated because of *Anastrepha fratericulus* (Wiedemann), *Ceratitus capitata* (Wiedemann), and fruit flies of the genus *Anastrepha*, shall be fumigated in accordance with the following schedule:

Dosage of EDB in ounces per 1,000 ft³ per 2 hours 70 °F or above	Fruit load in chamber [1] (Ounce)
50 pct or less	16

[1] Percent of chamber capacity.

The temperature shall be that of the fruit. Cubic feet of space shall be that of the unloaded chamber.

(3)(i) Mangoes may be fumigated in accordance with this section if packed in wooden field boxes of prepacked slatted wooden crates with wood excelsior. Individually wrapped mangoes may be fumigated if individually wrapped with conventional citrus tissue. Other containers or

wrappers may be approved for fumigation purposes by the Deputy Administrator of Plant Protection and Quarantine if he determines that such containers are of substantially nonabsorbent material with respect to ethylene dibromide, or such wrappers are permeable with respect to ethylene dibromide.

(ii) When loaded in the fumigation chamber, the crates or containers must be stacked evenly over the floor surface, and the crates or containers in a stack shall be separated at least 2 inches on all sides by wooden strips or other means, to insure adequate gas circulation.

(e) *Supervision of treatment.* The treatment approved in this section must be conducted under the supervision of an inspector. The inspector shall require such safeguards in each specific case for unloading and handling of the mangoes at the port of entry, and their handling during fumigation and aeration as required by paragraph (d) of this section and as he deems necessary to prevent the spread of plant pests and assure compliance with the provisions of this section. When treatment is conducted in the country of origin, those in interest must make advance arrangements for supervision and for approval of the fumigation plant in accordance with this section and furnish the Deputy Administrator of Plant Protection and Quarantine with acceptable assurances that they will provide to the U.S. Department of Agriculture funds to cover all salaries, transportation, per diem, and other administrative and incidental expenses for the supervising inspectors, including funds to compensate inspectors for requested inspectional services in excess of 40 hours weekly, according to the rates established for the payment of inspectors of Plant Protection and Quarantine.

(f) *Costs.* All costs of treatment, required safeguards, and supervision, other than the services of the supervising inspector during regularly assigned hours of duty and at the usual place of duty, shall be borne by the owner of the fruit or his representative. When treatment is given in foreign countries, all costs of treatment, required safeguards, and supervision of treatments by the inspector shall be borne by the owner of the fruit or his representative.

(g) *Department not responsible for damage.* The treatments prescribed in paragraph (d) of this section are judged from experimental tests to be safe for use with mangoes. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatments or because of safeguards required under paragraph (e) of this section.

§ 319.56–2i Administrative instructions prescribing method of fumigation of mangoes from Mexico.

(a) *Authorized procedure.* Fumigation of mangoes in Mexico with ethylene dibromide at normal atmospheric pressure, in accordance with the following procedures and as so certified by an inspector, is hereby prescribed as a condition of entry under permit in accordance with § 319.56–2, through ports specified in the permit, for mangoes produced in Mexico. This treatment is specific for fruit flies of the genus *Anastrepha* known to occur in these countries, and will not qualify for entry shipments of fruits therefrom should other dangerous pests of mangoes be found in these countries for which the treatment is not effective.

(b)(1) *Approved fumigation.* (i) The approved fumigation shall consist of fumigation with ethylene dibromide at normal atmospheric pressure in a fumigation chamber which has been approved for that purpose by Plant Protection and Quarantine. The chamber must be equipped with a gastight glass window to permit viewing the electrically heated vaporizing pen inside the chamber while fumigation is in progress, or be provided with an outside signal light to indicate when the vaporizing current is on or off. Plant Protection and Quarantine will approve only those chambers which are properly constructed, satisfactorily maintained, adequately equipped, and at locations where required supervision can be furnished. The chamber load shall not exceed 80 percent of the chamber's volume when mangoes are fumigated.

(ii) The ethylene dibromide, a liquid at ordinary temperatures, must be volatilized within the sealed fumigation chamber in an electrically heated vaporizing pan. The gas within the chamber shall be circulated by an electric fan or blower during the period of volatilization and continuously thereafter during the exposure period. The exposure period shall begin when volatilization is complete. The fan or blower must be of a capacity to circulate the entire air mass within the chamber in 1 minute.

(iii) Mangoes to be fumigated may be fumigated in open field boxes or may be packed prior to fumigation in export flats with wood excelsior. Paper wrappings for individual fruits may not be used for mangoes unless authorized in advance by Plant Protection and Quarantine. When loaded in the fumigation chamber the boxes or containers shall be separated by at least 1 inch on all sides by wooden strips or other means.

(iv) The period of fumigation, the dosage, and the temperature at which the fumigation is applied shall be in accordance with such conditions and procedures as may be prescribed by the Deputy Administrator of Plant Protection and Quarantine, and under the supervision of a Plant Quarantine Inspector of the U.S. Department of Agriculture.

(2) *Supervision of fumigation.* (i) Inspectors of Plant Protection and Quarantine will supervise the fumigation of mangoes in Mexico and will prescribe such safeguards as may be necessary for the handling, packing, and transportation of the fruit from the time it leaves the treating plant until it reaches the U.S. port of entry. The final release of the fruit for entry into the United States will be conditioned upon compliance with the prescribed safeguards.

(ii) Supervision of fumigation at places in Mexico contiguous to ports of entry where inspectors are regularly stationed will, if practicable, be carried out as a part of normal inspection activities and when so available will be furnished without cost to the owner of the fruit or his representative.

(3) *Costs.* All costs of constructing, equipping, maintaining and operating fumigation plants and facilities, and carrying out precautions prescribed for posttreatment safeguards shall be borne by the owner of the fruit or his representative. Where normal inspection activities preclude the furnishing of supervision during regularly assigned hours of duty, supervision will be furnished on a reimbursable overtime basis and the owner of the fruit or his representative will be charged in accordance with §§ 354.1 and 354.2 of this chapter.

(4) *Approval of fumigation plants.* Approval of fumigation plants in Mexico will be contingent upon compliance with the provisions of paragraph (a)(2)(i) of this section and upon the availability of qualified personnel for assignment to supervise the treatment and posttreatment handling of mangoes. Those in interest must make advance arrangements for approval of the fumigation plant and for supervision, and furnish the Deputy Administrator of the appropriate Plant Protection and Quarantine [1] with acceptable

[1] Preliminary inquiries should be directed to the Regional Director, Plant Protection and Quarantine, Apartado Postal No. 815, Monterrey, Nuevo Leon, Mexico.

assurances that they will provide, to the U.S. Department of Agriculture, funds to cover all salaries, transportation, per diem, and other administrative and incidental expenses for the supervising inspectors, including funds to compensate inspectors for requested inspectional services in excess of 40 hours weekly, according to the rates established for the payment of inspectors of Plant Protection and Quarantine.

(5) *Department not responsible for damage.* While the prescribed treatment is judged from experimental tests to be safe for use with mangoes, the Department assumes no responsibility for any damage sustained through or in the course of treatment, or because of posttreatment safeguards.

Done at Washington, DC, this 14th day of February 1986.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 86-3755 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 419

[Doc. No. 0070A]

Barley Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) published a Final Rule in the **Federal Register** on Wednesday, June 26, 1985, at 50 FR 26349, revising and reissuing the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1986 and succeeding crop years. Section 419.8 containing the provisions for the Malting Barley Option was inadvertently omitted from these regulations. This notice is published to correct that error.

ADDRESS: Written comments on this correction should be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: FR Doc. 85-15342, appearing at page 26350 is corrected as follows:

1. On page 26350, 7 CFR Part 419 is corrected by adding § 419.8 to the Table of Contents to read as follows:

Sec.
419.8 Malting Barley Option.

2. FR Doc. 85-15342, is further corrected by adding § 419.8 to read as follows:

§ 419.8 Malting barley option.

(a) Notwithstanding the provisions of subsection (d) 9c and e of the policy found at § 419.7, an insured producer may, upon submission and approval by the Corporation of a Malting Barley Option Amendment, elect to insure all insurable acreage in which the insured has a share which is grown under contract or agreement with a company in the business of buying Malting Barley: *providing* (1) all acreage of malting barley in the county in which the insured has a share and which is grown under the contract or agreement which is executed by both parties before the acreage report, must be insured, and (2) the Malting Barley Option Amendment will be applicable only for the crop year for which it is submitted. A new Amendment must be submitted for each subsequent crop year.

(b) For those insured who elect to insure malting barley under the Malting Barley Option Amendment, all provisions of the Barley crop insurance policy will apply, except those in conflict with the Amendment. The terms of the Amendment are:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Barley—Crop Insurance Policy
Malting Barley—Option Amendment

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____ Tax _____

It is hereby agreed that a signed Malting Barley Option Amendment will be submitted to us on or before the final date for accepting applications for each crop year you wish to insure your malting barley under this Amendment and upon our approval, the following terms and conditions will apply:

(1) You must have a Federal Crop Insurance Barley Policy (Basic Policy) in force.

(2) All acreage of malting barley in the county in which you have a share grown under contract or agreement (contract) with a company in the business of buying Malting Barley (company) must be insured under this Amendment. All other barley acreage will be insured under the terms of the basic policy. The contract must be executed and binding on both the insured and the company before the acreage report is due.

(3) Failure to submit an Amendment for the crop year will result in your barley being insured under the terms of the basic policy.

(4) Your production guarantee will be based on your actual production history of malting barley.

(5) In lieu of section 9c of the basic policy, the indemnity will be determined on each unit by:

a. Multiplying the number of bushels of malting barley under contract (not to exceed your production guarantee) by your price election for malting barley;

b. Adding to that product the amount obtained by subtracting from your production guarantee the number of bushels under contract, if any, and multiplying that reminder by your price election for other barley;

c. Subtracting from this product, the dollar amount obtained by multiplying the number of bushels of malting barley to count by your price election for malting barley plus the dollar amount obtained by multiplying the number of bushels of barley that does not qualify as Malting Barley to count by your price election for barley under the basic policy;[1] and

d. Multiplying this result by your share.

(6) In lieu of section 9e of the basic policy, the production to count for any acreage designated for malting barley will be adjusted as follows:

a. Any mature production which is not eligible for quality adjustment under subsection (6)(b) will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent;

b. Any mature harvested malting production, or any appraised production which, due to insurable causes, has a test weight of less than 48 pounds per bushel or as determined by a Federal or State licensed grain grader in accordance with the Official United States Grain Standards, contains less than 95 percent suitable malting types; less than 93 percent sound barley; more than 10 percent thin barley; or more than 2 percent black barley; or is smutty, garlicky, or ergoty shall be adjusted by:

(1) Dividing the value of such barely by the contract price; and

2. Multiplying the results by the number of bushels of harvested or appraised production.

(7) If a fixed contract price is not included in your contract with the company, prior to the time acreage report is due, we will determine the contract price.

(8) Notwithstanding the provision of section 17j of the basic policy, we may agree that insurable acreage grown under the provisions of this amendment will be designated as separate unit(s).

(9) Your premium rate for malting barley will be set by the actuarial table.

(10) All provisions of the basic policy not in conflict with this amendment are applicable.

(11) The price election is $____ per bushel. The coverage level election will be the election under your basic barley.

Insured's Signature _____

[1] To determine Malting Barley to count and Barley to count see subsection 9e of the basic policy.

Date _____
Corporation Representative's Signature and Code Number _____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 522(a)).:

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring barley under the Barley Crop Insurance Regulations (7 CFR Part 419). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the option to insure malting barley, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, administrative tribunal or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested other than the Social Security Number may result in rejection of the option for insuring malting barley, and subsequent denial of any claim for indemnity which may be filed under such option, or may substantially delay acceptance of the Malting Barley Option, and any subsequent claim for indemnity.

3. The Authority Citation for 7 CFR Part 419 continues to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on February 11, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86–3761 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Reg. 627]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 627 establishes the quantity of California-Arizona navel oranges that may be shipped to market during the period February 21–27, 1986. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 627 (§ 907.927) is effective for the period February 21–27, 1986.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: 202–475–3919.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This rule is issued under Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1985-86 adopted by the Navel Orange Administrative Committee. The committee met publicly on February 18, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be handled during the specified week. The committee reports that the market for fresh navel oranges is improving. The regulation is needed to continue providing stability in the market and promote orderly marketing.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. To effectuate the declared purposes of the act, it is necessary to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

List of Subjects in 7 CFR Part 907

Agricultural Marketing Service, Arizona, California, Marketing Agreements and orders, Oranges (Navel).

PART 907—[AMENDED]

1. The authority citation for 7 CFR Part 907 continues to read:

Authority: Secs. 1–19, 48 Stat. 31, as amended 7 U.S.C. 601–674.

2. Section 907.927 Navel Orange Regulation 627 is hereby added to read:

§ 907.927 Navel Orange Regulation 627.

The quantities of navel oranges grown in California and Arizona which may be handled during the period February 21, 1986, through February 27, 1986, are established as follows:

(a) *District 1:* 1,400,000 cartons;
(b) *District 2:* Unlimited cartons;
(c) *District 3:* Unlimited cartons;
(d) *District 4:* Unlimited cartons;

Dated: February 19, 1986.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–3959 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–23]

Revised Description of the Santa Maria, CA, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the revised description of the Santa Maria, California, Control Zone and Transition Area that was published in the **Federal Register** on December 26, 1985 (50 FR 52767) (Airspace Docket No. 85–AWP–23). This action corrects that error.

EFFECTIVE DATE: 0901 G.m.t., March 13, 1986.

FOR FURTHER INFORMATION CONTACT: Frank Torikai, Airspace Branch, Air Traffic Division, Federal Aviation Administration; 15000 Aviation Boulevard, Lawndale, California 90261; telephone (213) 297–1649.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 85–30396 was published on December 26, 1985 which revised the description of the Santa Maria, California, Control Zone and Transition Area. An error was discovered in the description of the Control Zone and Transition Area, and this action corrects that error.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Control zones; Transition areas.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, Federal Register Document 85–30396, as published in the Federal Register on December 26, 1985 (50 FR 52767) is corrected as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1347(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Revised]

2. Section 71.171 is revised as follows:

Santa Maria, CA

"Within a 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.) beginning at lat. 34°50'15" N., long. 120°24'34" W.; clockwise via the 5-mile radius to lat. 34°52'14" N., long. 120°22'31" W.; to lat. 34°51'16" N., long. 120°21'16" W.; to lat. 34°49'32" N., long. 120°23'37" W.; to the point of beginning."

§ 71.181 [Revised]

3. Section 71.181 is revised as follows:

Santa Maria, CA

"That airspace extending upward from 700 feet above the surface beginning at lat. 34°45'08" N., long. 120°20'16" W.; to lat. 34°49'41" N., long. 120°26'12" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.); to lat. 34°54'09" N., long. 120°32'40" W.; to lat. 35°00'50" N., long. 120°37'56" W.; to lat. 35°03'40" N., long. 120°32'36" W.; to lat. 34°58'13" N., long. 120°28'18" W.; thence clockwise via the 5-mile radius of the Santa Maria Public Airport (lat. 34°53'56" N., long. 120°27'23" W.); to lat. 34°53'41" N., long. 120°22'07" W.; to lat. 34°48'57" N., long. 120°15'57" W.; to the point of beginning."

Issued in Los Angeles, California, on February 11, 1986.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86–3711 Filed 2–20–86; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 237

Annuities; Lump-Sum Payments; Correction

AGENCY: Railroad Retirement Board.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule published on January 23, 1986, by adding an instruction to the Federal Register which was inadvertently left out.

EFFECTIVE DATE: January 23, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph Drantz, (312) 751–4710.

SUPPLEMENTARY INFORMATION: In FR Doc. 86–1420, published on January 23, 1986, beginning on page 3035, an instruction to remove and reserve Subpart E of Part 237 of the Railroad Retirement Board's regulations was inadvertently left out. The regulation published on January 23, 1986, updated and replaced the information previously contained in Subpart E of Part 237. The purpose of this document is to remove and reserve Subpart E of Part 237.

Accordingly, in FR Doc. 86–1420 on page 3040 in column 3 Part 237 is corrected by adding to action number 2 the following heading and paragraph C:

Subpart E—[Removed and Reserved]

C. Subpart E—Lump-Sum Death Payments consisting of §§ 237.501 through 237.504 is removed and reserved.

Dated: February 14, 1986.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86–3745 Filed 2–20–86; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 540

Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate and Clavulanate Potassium for Oral Suspension

Correction

In FR Doc. 86–2484 beginning on page 4483 in the issue of Wednesday, February 5, 1986, make the following correction:

On page 4483, in § 540.103h(a)(1), the seventh line from the top of the third column should read "contain. Its clavulanate potassium content is satisfactory if".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8069]

Income Taxes; Qualified Conservation Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to Treasury Decision 8069, which was published in the Federal Register on January 14, 1986 (51 FR 1496). Treasury Decision 8069 issued final regulations relating to contributions not in trust of partial interests in property for conservation purposes.

EFFECTIVE DATE: The regulations that are the subject of this correction are effective December 18, 1980. This correction is also effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1986, the Federal Register published final regulations relating to contributions not in trust of partial interests in property for conservation purposes. The provisions

set forth in those regulations reflected changes made by the Tax Reform Act of 1984 and the Temporary Tax Provisions, Extension.

Need for Correction

As published, Treasury Decision 8069 contains a typographical error in the text of § 1.170A–14(g)(2) where the subject of conservation contributions made prior to February 12, 1986, is discussed. The correct, and intended, date is February 14, 1986.

Correction of Publication

Accordingly, the publication of Treasury Decision 8069, which was the subject of FR Doc. 86–727 (51 FR 1496), is corrected as follows:

Para. 1. In § 1.170A–14(g)(2) on page 1504, first column, paragraph numbered (2), line 13, the language "February 12," is removed and the language "February 14," is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86–3861 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[T.D. 8074]

Income Taxes; Stock Acquisitions and Target Corporation Assets; Section 338 International Aspects

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to Treasury Decision 8074, which was published in the **Federal Register** on February 12, 1986 (51 FR 5163). Treasury Decision 8074 issued temporary regulations relating to international aspects of section 338 of the Internal Revenue Code of 1954.

EFFECTIVE DATE: The regulations that are the subject of these corrections are effective February 12, 1986. These corrections are also effective February 12, 1986.

FOR FURTHER INFORMATION CONTACT: Keith E. Stanley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–3458 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On February 12, 1986, the **Federal Register** published temporary regulations relating to international aspects of section 338 of the Internal Revenue Code of 1954, as added by the Tax Equity and Fiscal Responsibility Act of 1982 and amended by the Technical Corrections Act of 1982 and the Tax Reform Act of 1984.

Need for Corrections

As published, Treasury Decision 8074 contains some typographical errors with respect to dates (page 5189, first column, *Examples (1)* and *(2)*(ii)) and in the text of § 1.338–4T(f)(6)(ii) Answer 1 (ii)(C) (page 5196, first column).

Correction of Publication

Accordingly, the publication of Treasury Decision 8074, which is the subject of FR Doc. 86–2951 (51 FR 5163), is corrected as follows:

Para. 1. In § 1.338–5T(j)(7)(vii) on page 5189, first column, *Example (1)*, line 13, and *Example (2)*(ii), line 6, the language "March 15, 1986," is removed and the language "February 12, 1986," is added in its place in both locations.

Para. 2. In § 1.338–4T(f)(6)(ii) Answer 1(ii)(C) on page 5196, first column, paragraph (C), captioned *Certain foreign P group members*, is amended as follows:

(1) In line 4, the language "carryover election if *(1)* it is not subject" is removed and the language "carryover election unless *(1)* it is subject" is added in its place.

(2) In line 11, the language "it does not purchase any of the stock" is removed and the language "it purchases any of the stock" is added in its place.

(3) In line 13, the language "of T or of an affected target, and *(3)* it" is removed and the language "of T or of an affected target, or *(3)* it" is added in its place.

(4) In line 14, the language "does not directly or indirectly hold stock" is removed and the language "directly or indirectly (in the manner described in section 958 (a)) holds stock" is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86–3863 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1, 20 and 25

[T.D. 8069]

Income Taxes; Qualified Conservation Contributions

Correction

In FR Doc. 86–727 beginning on page 1496 in the issue of Tuesday, January 14, 1986, make the following corrections:

1. On page 1500, second column, in § 1.170A–14(d)(4)(ii)(A) introductory text, fifth line from the bottom, remove the word "in". In § 1.170A–14(d)(4)(ii)(A)*(3)*, second line, insert the word "in" between "factor" and "an".

2. On page 1504, second column, in § 1.170A–14(g)(4)(ii)(A)*(2)*, fifth line, "of" should read "or".

3. On page 1507, first column, in § 1.170A–14(h)(4), Example (10), sixth line from the bottom, insert the following between "the" and "deduction": "taxpayer's contiguous land, the amount of the". In Example (12), second line, "two-building" should read "two-story building". In the fifteenth line, "or" should read "of". In the twenty-second line, "and" should read "an".

4. On the same page, second column, in Par. 6(c), second line, "and" should read "are". In the third column, in Par. 8(a), fifth line, "of" should read "a". In (b), fourth line, insert the word "an" between "of" and "open".

BILLING CODE 1505–01–M

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26 CFR Part 301

[T.D. 8077]

Income Tax; Procedures and Administration; Restrictions on Church Tax Inquiries and Examinations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the procedures for conducting church tax inquiries and examinations. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations provide guidance concerning the procedures described in the Act and affect church tax inquiries and examinations within the scope of section 7611 of the Internal Revenue Code of 1954 as well as certain other requests for information relating directly or indirectly to churches.

DATES: The regulations apply to all church tax inquiries and examinations beginning after December 31, 1984 and are effective after December 31, 1984. Church examinations commenced prior to January 1, 1985, will be conducted pursuant to section 7605(c) of the Internal Revenue Code of 1954.

FOR FURTHER INFORMATION CONTACT: Monice Rosenbaum of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington,

DC 20224 (Attention CC:EE) Telephone 202–566–3938 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1985, the **Federal Register** published proposed amendments to the Procedure and Administration Regulations (26 CFR Part 301), in the form of temporary regulations, under section 7611 of the Internal Revenue Code of 1954 (50 FR 9614). The amendments were proposed to conform the regulations to changes made by the addition of section 7611 by section 1033 of the Tax Reform Act of 1984 (Pub. L. 98–369, 98 Stat. 1034–1039). The temporary regulations were accompanied by a notice of proposed rulemaking published in the **Federal Register** on March 11, 1985 (50 FR 9678) soliciting public comments.

Public comments on the proposed regulations were received. A public hearing was held on July 16, 1985. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Public Comments

Commentators suggested that the language of Q and A–3, defining what is a "church" for purposes of the section 7611 procedures, was inadequate in the case of an organization which operates at multiple locations or in the case of an organization composed of various functions some of which may or may not be separately incorporated. The text of Q and A–3 is not changed in these final regulations because the application of the section 7611 procedures to any organization "claiming to be a church" is deemed sufficiently broad to cover those situations where the Internal Revenue Service contacts the organization in a manner inconsistent with the section 7611 procedures on the assumption that the entity is not a church. Any organization claiming to be a church, and thus included under the procedures of section 7611, should advise the Internal Revenue Service of its claim when contacted.

Commentators questioned whether Q and A–5, concerning the extent to which the Internal Revenue Service may use third party records, an Q and A–11, concerning circumstances in which the Internal Revenue Service may, in lieu of an examination, propose to revoke an organization's exemption, were to be applied without regard to the procedures of section 7611. Qs and As 5 and 11, that refer to these situations, each contains specific language which requires the Internal Revenue Service to provide the organization with notice and offer of a conference.

Commentators noted that Q and A–15 provides that the Internal Revenue Service may examine records of a year earlier than the year, or years, specified in the examination notice. An examination of records of an earlier year may be made if material to a determination of exempt status during the period under examination or if material to a determination of unrelated business income tax liability. An examination of records of an earlier year may be necessary, for example, in cases concerning adjustments to basis, depreciation or amortization. The number of years under examination or for which an assessment of tax may be made are limited by section 7611(d)(2); however, section 7611(b)(4) authorizes the examination of any records not specified in the examination notice to the extent necessary to determine tax liability.

Other comments received have been addressed in the Internal Revenue Manual provisions relating to church tax inquiries and examinations.

A change has been made to Q and A–9 in response to a comment suggesting that the Internal Revenue Service be required to request information during the inquiry notice stage in an effort to alleviate the concerns which gave rise to the inquiry.

A change has been made to Q and A–10 in response to a comment that the expansion of an examination should be a result of facts and circumstances which subsequently come to the attention of the Internal Revenue Service after issuance of the notice of examination.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required.

Although a notice of proposed rulemaking soliciting public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these regulations are not subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Drafting Information

The principal author of these regulations is Monice Rosenbaum of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

Adoption of Amendments to the Regulations

Accordingly, after careful consideration of all comments received, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Para. 1. The authority for Part 301 continues to read in Part:

Authority: 26 U.S.C. 7805. * * *.

§ 301.7611–1T [Amended]

Para. 2. Section 301.7611–1T is amended by removing "T" from the section number and removing the word "(Temporary)" from the title.

§ 301.7611–1 [Amended]

Para. 3. The last sentence of the first paragraph of A–9 of section 301.7611–1 is amended by removing the words "may also" and adding in their place the words "will generally".

§ 301.7611–1 [Amended]

Para. 4. The last sentence of the second paragraph of A–10 of section 301.7611–1 is amended by removing the words "(see Q and A–9)". The following new sentence is added to the end of that paragraph:

Thus, the Internal Revenue Service is not precluded from expanding its inquiry beyond the concerns expressed in the examination notice (second notice) as a result of facts and circumstances which subsequently come to its attention (including, where appropriate, an expansion of an unrelated business income examination to include questions of tax-exempt status, and vice versa).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: January 28, 1986.

J. Roger Mentz,

Acting Assistant Secretary of the Treasury.

[FR Doc. 86–3864 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA Action NE 1732; A-5-FRL-2944-3]

Revision to State Implementation Plans; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On May 30, 1985, EPA reproposed action on a State Implementation Plan (SIP) revision from Nebraska which deleted the review requirements for complex sources of air pollution from four State regulations. In the May 30 action, EPA proposed to approve the State's deletion of complex source review requirements for all areas of the State except the carbon monoxide (CO) nonattainment areas of Lincoln and Omaha. EPA further proposed to retain these requirements in Lincoln and Omaha until the State can demonstrate that these requirements are unnecessary for attaining and maintaining the CO standards in these two areas.

The purpose of today's notice is to take final action on the May 30 proposed revisions. No comments were received in response to the proposed rulemaking.

EFFECTIVE DATE: This action is effective March 24, 1986.

ADDRESSES: Copies of the State submission are available for review during normal business hours at the following locations:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC

Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101

State of Nebraska, Department of Environmental Control, 301 Centennial Mall South, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: Mary C. Carter at (913) 236-2893, FTS 757-2893.

SUPPLEMENTARY INFORMATION: On October 6, 1983, the State of Nebraska submitted a SIP revision comprised of amendments to various regulations, including requirements for complex or indirect sources of air pollution. On May 30, 1985, EPA proposed action on the amendments to the complex source review requirements (see 50 FR 23031) and took final action on the remainder of the amended regulations (see 50 FR 23003). Today's action will only discuss the State's amendments to the complex source review requirements.

In the May 30, 1985, notice, EPA proposed to approve the State's deletion of the review requirements in all areas of the State except the Lincoln and Omaha carbon monoxide (CO) nonattainment areas, where the indirect source review program will be retained until the State can demonstrate that the program is unnecessary for attainment and maintenance of the CO standards in these two areas of the State.

A complex or indirect source is a facility which attracts or may attract mobile sources of pollution; e.g., a shopping center or highway. One of the pollutants emitted by mobile sources is CO. The State has reported that the complex source review requirements are ineffective and unnecessary. Only two applications have been reviewed since 1974, and the State has concluded that the program has a minimal impact on control of mobile source emissions.

Section 110(a)(5)(A)(iii) of the Clean Air Act provides that a state may revise its approved SIP to suspend or revoke an indirect source review program included in it, provided that the SIP meets all the substantive and procedural requirements of section 110. EPA believes that the revocation of the indirect source review program (excluding the CO nonattainment plans for Lincoln and Omaha which will be discussed in separate rulemakings) meets the substantive and procedural requirements of Section 110 of the Act. Further, with the exception of the Lincoln and Omaha CO nonattainment areas, all other areas of Nebraska are considered to be in attainment of the CO standards.

On April 12 and May 6, 1985, the State submitted final plan revisions for the Lincoln and Omaha CO nonattainment areas. EPA is taking action on the indirect source review program separately for these two areas in connection with rulemaking on the CO plans.

The October 6, 1983, submission from Nebraska, which is discussed in this rulemaking, was proposed for approval on May 30, 1985 (50 FR 23031). The reader is referred to the proposal for further discussion. No comments were received on the May 30 proposal.

ACTION: EPA approves the State's deletion of the indirect source review requirements, except as they pertain to the Lincoln and Omaha CO nonattainment areas.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 22, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide.

Note.—Incorporation by reference of the SIP for the State of Nebraska was approved by the Director of the Federal Register on July 1, 1982.

Dated: December 16, 1985.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart CC—Nebraska

1. The Authority Citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1420 is amended by adding a new paragraph (c)(32) to read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * * * *

(32) Revisions to Chapter 1, "Definitions"; Chapter 4, "Reporting and Operating Permits for Existing Sources; When Required"; and Chapter 5, "New, Modified, and Reconstructed Sources; Standards of Performance, Application for Permit, When Required", were submitted by the Governor on October 6, 1983. These revisions deleted the review requirements for complex sources of air pollution for the entire State. These review requirements were adopted by the State on February 22, 1974 (submitted on February 27, 1974) and were approved by EPA on September 9, 1975, See paragraph (c)(8) above. Approval action was taken on the deletion of these requirements except as they pertain to the Lincoln and Omaha CO nonattainment areas.

[FR Doc. 86-969 Filed 2-20-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-273-F]

Medicare Program; Procedures for Determining Whether Providers, Practitioners, or Other Suppliers of Services Are Liable for Certain Noncovered Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These regulations revise the way we apply limitation of liability for certain noncovered services furnished by providers, practitioners, and suppliers of Medicare services under section 1879 of the Social Security Act.

We will no longer apply an administrative mechanism, commonly known as the favorable presumption, in determining whether a hospital, skilled nursing facility, or home health agency should be held liable for furnishing a noncovered service. The decision to make or deny payment for these noncovered provider services will now be made after an analysis of the circumstances, without the use of a presumption as to whether the provider did not know or could not be expected to know that furnished services were noncovered.

EFFECTIVE DATE: This rule is effective for services furnished by providers, practitioners, and suppliers on or after March 24, 1986. Paragraphs (b) and (c) of § 405.334 and paragraphs (b), (c), and (d) of § 405.336 of this rule contain information collection requirements with which the public is not required to comply until the Executive Office of Management and Budget approves those requirements. (See section VI.B of this preamble for a discussion of information collection.)

FOR FURTHER INFORMATION CONTACT: Denis M. Garrison, (301) 594–9435.

SUPPLEMENTARY INFORMATION:

I. Background

Under title XVIII of the Social Security Act (the Act), HCFA pays for covered services furnished to Medicare beneficiaries. In some instances, the Act defines covered and excluded services; in other instances, regulations (42 CFR Part 405, Subpart C) and program instructions distinguish covered from noncovered services. Despite the guidance provided in these materials, circumstances arise that result in bills being submitted by providers, practitioners, and suppliers of services for what are later determined to be noncovered services. A question then arises as to whether the beneficiary, provider, practitioner, supplier, or Medicare should be liable for payment for the furnished care.

Section 1879 of the Act provides financial relief for a beneficiary, provider, practitioner, or supplier by permitting payment in some cases, if a claim is denied because the services are found not to be medically reasonable and necessary under section 1862(a)(1) of the Act, or to constitute custodial care under section 1862(a)(9) of the Act. (These provisions are implemented in our regulations at 42 CFR 405.310(k) and 405.310(g), respectively.) Under section 1879(a) of the Act, if a finding is made that neither the beneficiary nor the provider, practitioner, or supplier, knew or could reasonably have been expected to know that the services were not covered, Medicare will pay the claims. However, under section 1879(b) of the Act, if it is determined that the provider, practitioner, or supplier, but not the beneficiary, knew or could reasonably have been expected to know that the services were not covered, that entity will be held liable for the charges for the denied services. If the provider, practitioner, or supplier seeks and collects payment for these charges from the beneficiary, the program will reimburse the beneficiary, less applicable deductible and coinsurance amounts. These payments are considered overpayments to the provider, or assignee practitioner or supplier and are recovered by us. Under section 1879(c) of the Act, we make no payment if both the beneficiary and the provider, practitioner, or supplier knew or could reasonably have been expected to know that the services were not covered.

Under 42 CFR Part 405, Subpart G, a party found to have knowledge that a furnished Medicare Part A (Hospital Insurance) service was noncovered can obtain a reconsideration of the limitation of liability determination by the appropriate medical review entity (either a Utilization and Quality Control Peer Review Organization (PRO) or an intermediary) that made the initial determination. If $100 or more is at issue, the beneficiary may appeal the reconsidered limitation of liability determination to an administrative law judge (ALJ) and then, if still dissatisfied, to the Appeals Council of the Social Security Administration's Office of Hearings and Appeals. If, at that point, $1,000 or more is still in controversy, the beneficiary may appeal further to a Federal court. The provider has the same appeal rights as the beneficiary on the issue of limitation of liability if the provider is found liable and the beneficiary who made the request for payment will not exercise his or her appeal rights.

Under 42 CFR Part 405, Subpart H, the party found liable for a furnished noncovered Medicare Part B (Supplementary Medical Insurance) service can obtain a review by the intermediary or carrier that made the determination. During that review, the party may argue that its liability should be limited because it did not know and could not reasonably have been expected to know that a furnished service would not be covered because it was not reasonable and necessary or constituted custodial care. 42 CFR Part 405, Subpart H, also provides for a hearing by a carrier hearing officer if $100 or more is still in controversy after the carrier review has been completed.

In 1972, when Congress enacted the limitation of liability provisions in section 1879 of the Act (Section 213 of the Social Security Amendments of 1972, Pub. L. 92–603), providers were not as knowledgeable about Medicare coverage rules as they later became and our written guidelines were not as explicit as they are now. Therefore, we developed a formula to allow providers who usually make correct coverage determinations to be paid for their few incorrect coverage determinations.

In §§ 405.195 andf 405.196, we established five performance criteria for determining whether providers of services are liable for services found to be not medically reasonable and necessary, or found to constitute custodial care. A provider that met those five criteria had the advantage of a presumption (in the absence of specific evidence to the contrary) that it neither knew nor could reasonably have been expected to know of the noncoverage of the items or services. The criteria were as follows:

- The provider complied with applicable standards for utilization review.
- The provider complied with procedures that were designed to assure that bills for payment and medical documentation were submitted in a timely manner.
- The provider established procedures that ensured prompt notification to the beneficiary if the beneficiary was being furnished services or was to be furnished services that were determined by the provider or the intermediary to be noncovered.

• On the basis of the bills it submitted, the provider demonstrated that it could effectively distinguish between cases in which services furnished by the provider were covered under Medicare and cases in which furnished services were not covered under Medicare; that is, the provider's "denial rate" was under a certain level for the previous calendar quarter.

• The provider demonstrated that it was effectively applying conditions for certification and recertification as required by the regulations.

A provider was deemed to have met these five criteria described in §§ 405.195 and 405.196, as follows: If a hospital or a home health agency (HHA) experienced a denial rate of its Medicare claims of five percent or less during a calendar quarter, we presumed during the next calendar quarter that that provider did not know that a particular service was not reasonable and necessary or was custodial in nature. For a skilled nursing facility (SNF), the denial rate could not exceed 10 percent. The denial rate was determined by the percentage of days or visits billed by the provider as covered but that were later determined to be noncovered when the bill was reviewed. Application of this formula, which went into effect in July 1973, became known as the "favorable presumption."

Subsequently, in 1978 over 90 percent of each type of provider had the benefit of the favorable presumption. At that point, we determined that the majority of each type of provider had denial rates significantly lower than the 10 percent standard for SNFs and the five percent standard for hospitals and HHAs that were then in use. This meant that, without adversely affecting many providers, we could lower the denial rates, which would get us closer to the goal of section 1879 of the Act that we pay for noncovered care only if both the provider and the beneficiary did not know and could not reasonably be expected to know that a service is not covered by Medicare. Therefore, we tightened our standards for application of the favorable presumption by lowering the denial rate to five percent for SNFs and to 2.5 percent for hospitals and HHAs. (See Medicare Intermediary Manual, Part 3, Transmittal No. 670, issued April 1978.)

Since that time, use of the favorable presumption has some under increasing scrutiny. Questions have arisen about the continued justification for use of an administrative presumption to determine a provider's liability for services not reasonable and necessary or determined to be custodial care. Various program experiences, changes in the operation of the program (including the prospective payment system for hospitals, as discussed below) and legislative changes since the limitation of liability provision (section 1879 of the Act) was enacted have been cited as reasons why use of the favorable presumption can be ended.

In March 1983, the General Accounting Office (GAO) recommended (GAO/HRD–83–38) that HCFA "establish more stringent eligibility requirements for the application of waiver of liability for health care providers under Part A of Medicare." It is GAO's view, as expressed in the report, that a provider that has participated in Medicare over a period of several years should generally have knowledge of which services are covered, based on its experience with the program. GAO found that tightening the requirements for the limitation of provider liability would achieve savings and increase incentives for providers to furnish only covered care.

In addition, with respect to most hospitals, Medicare payment for inpatient services is now based on the prospective payment system (42 CFR Part 412). Certain aspects of this system have raised additional questions about the continued need to apply the favorable presumption to hospitals. For example—

• Under the prospective payment system, which became effective with hospital cost-reporting periods that began on or after October 1, 1983, hospitals are paid (with some exceptions) in accordance with a predetermined rate for medically necessary services furnished during an inpatient stay, regardless of the number of days of the hospital stay. Consequently, we expect that the number of claims for services denied because part of a hospitalization was not reasonable and necessary, or constituted custodial care, will decline.

• As a result of the expected reduction in the volume of claims involving length of stay denials subject to limitation of liability considerations brought about by the prospective payment system, PROs are in a better position to devote resources to the review of specific denials under the prospective paymant system.

II. Provisions of the Proposed Rule

On February 12, 1985, we published a notice of proposed rulemaking (50 FR 5787) (NPRM or proposed rule) to change the way we apply the limitation of liability provision for providers, practitioners, and suppliers. We did not propose any changes in the way we apply the limitation of liability provisions for beneficiaries.

• We proposed to discontinue use of the favorable presumption in determining whether a provider should have known that a particular service would not be covered because it was not reasonable and necessary or constituted custodial care. We proposed, instead, to make case by case determinations of liability.

• In addition, we proposed that, under both Part A and Part B, a provider, practitioner, or supplier would be deemed to have knowledge that payment cannot be made if an intermediary, carrier, PRO, or utilization review committee had given written notice that there had been a pattern of inappropriate utilization of the same, similar, or reasonably comparable services.

• Finally, we also proposed that knowledge by a provider, practitioner, or supplier could be established based on its specific experience with the Medicare program.

We also proposed specific rules concerning implementation of the patterns of inappropriate utilization provision that, for the reasons discussed in section IV.L., below, we have decided not to finalize.

III. Decision To Discontinue the Favorable Presumption

We have decided that discontinuing use of the favorable presumption, as we proposed to do, is necessary and proper. In arriving at this decision, we have given careful consideration to the comments we received from the public on the proposed rule, and we have analyzed the alternatives suggested in those comments. Our decision is based on many reasons, as discussed throughout this preamble. In addition, we have concluded that discontinuing the favorable presumption will result in significant cost savings to the Medicare program, and second, that the discontinuance will neither adversely affect hospitals, SNFs or HHAs, nor result in any appreciable loss of patient access to care or quality of care.

Following is a summary of the reasons for our decision, all of which are discussed in greater detail below:

• We have observed that, since the favorable presumption was implemented through regulations in 1973, providers working closely with their intermediaries and Professional Standards Review Organizations (or, beginning in 1984, with PROs) have significantly reduced the number of incorrect coverage determinations. This is borne out by the fact that the great

majority (over 80 percent) of all categories of providers make coverage determinations with almost no errors, as evidenced by their ability to qualify for the favorable presumption. For example, during the period April 1985 through June 1985, 83 percent of hospitals and 82 percent of all HHAs made accurate medical necessity and custodial care coverage decisions in 97.5 percent or more of their bills to Medicare. Eighty-five percent of all SNFs made correct decisions in more than 95 percent of their bills.

- With regard to hospitals, PROs currently review some hospital admissions prior to admission and proposed inpatient procedures. Thus, in more cases, the hospital knows beforehand whether the admission or procedure is covered by Medicare.
- Beginning in October 1983, most hospitals have been paid under the prospective payment system in accordance with a predetermined rate. This rate is based on one of 470 diagnosis-related groups (DRGs). Thus, as long as an admission is covered under Medicare, this minimum payment is made regardless of the number of days of the hospital stay. Consequently, denials of partial stays only occur in extraordinarily long hospital stays. Prior to implementation of the prospective payment system, most hospital denials were related to length of stay. This fact bolsters our conclusion that fewer denials are likely now on that basis. Thus, most hospitals will not be adversely affected by elimination of the favorable presumption.
- The prospective payment system has tended to shorten hospital stays, making it more readily determinable whether the post hospital care will be covered under the Medicare rules. This should result in lowering the number of SNF and HHA bills denied.
- Descriptions of what constitutes covered SNF and HHA levels of care are contained in Medicate regulations (§§ 409.30 through 409.35 and §§ 409.40 through 409.43, respectively) and program manuals.
- HHAs will now be assured of receiving more consistent coverage decisions due to a new Home Health Certification and Plan of Treatment form (HCFA–485). Completion of this form assures that medical information necessary for a proper coverage decision will be submitted initially.
- Under section 1816(e)(4) of the Act, which was amended by section 2326(b) of the Deficit Reduction Act of 1984 (Pub. L. 98–369), HCFA is in the process of transferring the servicing of all free-standing HHAs to 10 regional intermediaries (see 51 FR 5403, February 13, 1986). This change is expected to improve the administration of the home health benefit because we expect more consistent coverage determinations because fewer intermediaries will be making HHA determinations.

Finally, two points of importance must be kept in mind.

- Whenever a provider is in doubt about whether a service is covered, the provider may contact the PRO or intermediary to receive advice.
- It is only the regulatory favorable presumption that we are eliminating. The statutory limitation of liability provision has not been altered. Therefore, providers still may show, on a case by case basis, that they did not know or could not reasonably have been expected to know that services were not covered by Medicare.

IV. Analysis and Response to Public Comments

We received 248 letters about the proposed rule from individuals and organizations. These commenters included providers, members of Congress, associations representing providers, medical associations, an association that represents PROs, an association that represents physical therapists, an intermediary, a legal advocate for the elderly, and a consumer advocate. We discuss the comments and provide our responses below:

A. Coverage Guidelines

Comment: Providers need the leeway for making occasional incorrect coverage decisions that the favorable presumption mechanism affords because HCFA coverage guidelines are unclear and are inconsistently applied by the medical review entities. Also, there is a need for revised national guidelines before the use of the presumption is discontinued.

Response: Generally, it is not difficult to establish the need for the Medicare inpatient hospital benefit.

Since Medicare began in 1966, Congress has always intended, under sections 1862 (a)(1) and (a)(9) of the Act, that the program cover only medically necessary inpatient hospital care. There is a broad consensus concerning which patients should be admitted to hospitals and for how long the patients should remain in the hospital.

In the hospital setting, the publication of specific admission guidelines is already provided because, under section 1154(a)(6) of the Act, the PROs utilize medical criteria based on local norms and practice patterns to screen cases. The medical criteria are provided to hospitals, and, therefore, hospitals are aware of the admission guidelines. Cases in which the admission does not meet the criteria are referred to a physician advisor to determine whether the admission is medically necessary and appropriate, or whether Medicare payment should be denied. In addition, part of PRO review is performed on a preadmission basis and another part on a preprocedure basis (that is, after admittance to the hospital but prior to an inpatient procedure). In these cases, the hospital knows the payment status of the case prior to admission or prior to performance of an inpatient procedure.

When the Medicare statute was enacted, the idea of a skilled nursing facility was a new one and home care was furnished by few HHAs. Over time, the understanding of the nature of these providers and their proper function has grown, and today we believe that the idea of a continuum of care has wide acceptance and that there is general understanding of the points in the treatment of patients at which movement from one level of care to another is appropriate.

Post-hospital extended care (skilled nursing care) was included under Medicare, not as a long term care or nursing home benefit, but as a complementary benefit to hospital care that was intended to substitute for the final days of a hospital stay. In determining whether an individual requires covered skilled nursing care, an SNF's administrative staff is expected to exercise the expertise that they have gathered during their years of participation in the program. It should be noted that HCFA's detailed regulations describing SNF care (see §§ 409.30 through 409.35) are supplemented by manual instructions. These instructions provide examples of what constitutes skilled care, including rehabilitation care, and other requirements for the care; for example, the need for the services to be provided on an inpatient basis as a practical matter. While it is certainly true that medical judgment must be used to apply these guidelines properly, we believe that the staff of an SNF have sufficient understanding of HACF's regulations and administrative procedures so that, after a careful review of the services a patient needs, the staff can determine whether the patient's overall condition and his or her medical needs meet the requirements for covered skilled nursing care. An SNF experienced with Medicare should be able to determine whether the services to be furnished a Medicare patient can only "as a practical matter" be provided in an SNF, as required by section 1814(a)(2)(B) of

the Act. Also, SNFs that are new to the Medicare program (or any other new provider as well), or experienced SNFs with borderline cases, can contact the intermediary in advance of providing services to ascertain whether the services would be covered.

Under the Medicare program, home health care is intended as the last stop on the "continuum of care" that frequently begins in the hospital, progresses through the SNF, and ends in the home. Although Congress eliminated the 100 day limit on home health care coverage (section 930(c) of Pub. L. 96–499), it did not eliminate the provisions that make it strictly a medically oriented benefit. The requirements in the Act for home health care state clearly that a patient must be "homebound" and in need of "intermittent" skilled nursing services, or physical therapy or speech therapy services, in order to qualify for coverage (see sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Act).

HCFA has several initiatives underway that will improve the consistency of claims review and the application of coverage guidelines on home health claims. For example, HHAs will be assured that consistent home health benefit coverage decisions are being made by means of a new Home Health Certification and Plan of Treatment form (HCFA–485). The new form, which became effective August 31, 1985, was developed to assure that essential home health medical information is submitted to intermediaries in a consistent fashion to facilitate an appropriate coverage decision. Also, training sessions for all intermediaries and HCFA Regional offices are being held to reinforce their knowledge of coverage rules and to ensure optimum and uniform use of the new form. In addition, under the provisions of section 1816(e)(4) of the Act, HCFA is in the process of the transfering of all free-standing HHAs to 10 regional intermediaries. We expect that the HCFA–485 form and the advent of fewer intermediaries for reviewing HHA claims will improve uniformity in the administration of home health benefits by Medicare.

We pointed out earlier that approximately 85 percent of all SNFs make accurate coverage decisions in more than 95 percent of their bills, and that 83 percent of all hospitals and 82 percent of all HHAs have been able to make accurate coverage decisions in at least 97.5 percent of their bills. Thus, while there may be some room for improvement in applying coverage guidelines to achieve even greater consistency by providers and intermediaries and other medical review entities, our latest data indicate that the vast majority of all providers are applying existing coverage guidelines appropriately. We, therefore, do not perceive a need for revision of the national guidelines that are contained in some detail in the Medicare regulations (§§ 409.10 through 409.43) and the Medicare manuals.

Finally, it must be noted that the limitation of liability provision will still operate to protect a provider from liability in cases where the ambiguity of the situation or a lack of information leads it to make an incorrect decision about Medicare's coverage of the care. In revising these regulations, we are simply ensuring that limitation of liability payments will be confined to those ambiguous situations noted by the commenters and will not be inappropriately made for a broader set of cases merely on the basis of an administrative presumption.

Comment: HCFA should issue criteria for acceptable standards of medical practice to put the provider on notice when services will be considered noncovered. In addition, HCFA should require that PROs publish the criteria that they use in making coverage determinations because PROs employ standards that differ from those formerly used by intermediaries in reviewing claims under the prospective payment system. Also, HCFA is wrong in claiming that hospitals already have knowledge of which services are covered by Medicare.

Response: Since standards of medical practice vary from place to place, it would not be appropriate to attempt to capture them in a regulation with nationwide applicability. However, HCFA does make available to providers and the medical community generally, listings and other informational issuances that specify certain items, services and procedures that are not covered by Medicare. HCFA attempts to inform the medical community on a timely basis whenever changes are made in coverage policy or new medical treatments are either approved or disapproved for payment. Thus, we do not intend to issue national guidelines for determining when care is covered under Medicare in every conceivable situation.

PRO operating procedures already require that a PRO's review criteria be made routinely available to those providers that a PRO reviews. The screening criteria used by PROs are available to hospitals under § 476.120 (50 FR 15361, April 17, 1985). Under this section, a hospital may contact a PRO at any time and request a copy of these criteria. Screening criteria are used by PRO non-physician reviewers to approve hospital admissions or hospital care. Therefore, hospitals are aware of which cases are approvable without further review by the PRO and of those that may not be approved. Hospitals should look closely at the latter as they may well be noncovered. If the reviewer cannot approve a case based on the screening criteria, the reviewer will refer the case to a PRO physician for review. If the PRO physician believes a denial should be made, under § 466.93 (50 FR 15333; April 17, 1985), the attending physician and a physician representing the hospital are also given an opportunity to discuss the case with the PRO physician before the denial is made.

Comment: If the favorable presumption is eliminated, HCFA should create some type of assurance of payment mechanism for providers by publishing specific admission guidelines.

Response: We believe that an assurance of payment mechanism for providers should not be used because providers should have a comprehensive understanding of the Medicare coverage rules, sufficient to make an assurance of payment mechanism unnecessary. We do not believe that a real need for an assurance of payment mechanism exists for hospitals since the PROs already base their decisions on medical criteria based on local practice patterns that have been provided to hospitals. Some PRO review is done on a preadmission basis and some is done prior to inpatient procedures. Therefore, in some cases the hospital would know before an admission or before an inpatient procedure whether the services are covered.

One type of assurance of payment mechanism for SNFs and HHAs was implemented by HCFA under section 228(a) of Pub. L. 92–603. This provision permitted us to establish a presumed period of coverage based on the attending physician's diagnosis. However, although this procedure was developed for certain diagnoses, physicians and providers did not use it, and in 1980 Congress enacted section 941(a) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499), which repealed section 228(a) of Pub. L. 92–603.

Comment: HCFA should not eliminate the favorable presumption for HHAs due to a lack of clarity and consistency in coverage determinations regarding whether patients are "homebound" or whether skilled nursing and home health aide sevices are "intermittent". HHAs should not be held liable for the costs of

denials on these bases absent clear and consistently applied policy.

Response: We disagree that currently there is an absence of clarity with respect to coverage policy regarding the homebound and intermittent requirements under sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Act, respectively. We have, however, undertaken administrative efforts to enhance consistent and uniform application of current policy. These efforts include HHA and intermediary training and the implementation of the new certification and plan of treatment form (as discussed above).

We note, however, that the issues raised by the commenters concern coverage requirements that, if not met, would result in denials under sections 1814(a)(2)(C), 1835(a)(2)(A), and 1861(m) of the Act rather than under paragraphs (a)(1) or (a)(9) of section 1862 of the Act, the only provisions under which limitation of liability may apply. Thus, limitation of liability would have no bearing on these situations and any payments made under the limitation of liability provisions for these denials in the past were made erroneously.

In the context of the Medicare home health benefit, it is important to remember that the limitation of liability protection does not apply to noncovered home health services if the reason for the denial is anything other than the reasonable and necessary exclusion (section 1862(a)(1) of the Act) or the custodial care exclusion (section 1862(a)(9) of the Act). For example, if services are not covered because the patient was not confined to the home or because the patient needed skilled nursing care on other than an intermittent basis, the denial would be made under section 1814(a)(2)(C) or 1835(a)(2)(A) of the Act and the limitation of liability provision would not apply. Similarly, if the services of home health aides were provided on other than an intermittent basis, or if the services that were provided failed to meet the Medicare definition of what constitutes a covered service (for example, skilled nursing care or physical therapy), the denial would be made under section 1861(m) of the Act and the limitation of liability provisions would not apply.

Comment: Although providers will have no leeway in making inaccurate coverage determinations without losing payment for services furnished to Medicare beneficiaries, HCFA does not hold its intermediaries to the same standard.

Response: To enhance the quality of contractor performance through a system of onsite review and appraisal, HCFA has implemented the Contractor Performance Evaluation Program (CPEP). This program contains performance standards for intermediaries that measure the accuracy of their coverage decisions. Furthermore, the intermediary must perform necessary medical review activities as required by HCFA instructions in a timely, accurate, and cost effective manner. In addition, CPEP contains standards for processing bills in a timely manner. If it is determined that intermediaries are not meeting the standards, they will be subject to adverse action by HCFA.

Comment: The high reversal rate (about one-third) of denials must be taken into account since it indicates that the intermediaries have difficulty making correct coverage decisions.

Response: The reversal rate of about one-third in Federal fiscal year (FY) 1984 is actually misleading. It represents only the ratio of reversed reconsideration determinations compared to the total number of reconsiderations requested. A more accurate picture can be obtained by considering the following: Although a considerable number of the denials were reversed on reconsideration, the reversals represented only 1.6 percent of the total number of medical denials. Ninety-two percent of these reversals were based on the receipt of additional medical evidence. Therefore, a high percentage of those cases would have been paid initially if more evidence had been submitted initially. In calendar year (CY) 1984, HCFA's intermediaries processed a total of 18.1 million Part A bills of which 310,000 resulted in medical denials (62,400 hospital inpatient, 188,000 SNF and 59,600 HHA). Reconsiderations were requested for only 6.8 percent of these denials. Analysis of the reversal rate in relation to the number of denials actually shows that, for the most part, intermediaries do make correct initial determinations.

We also want to point out generally that reversal rates not only include full and partial reversals that are more favorable to the claimant, but also some reversals of the original determination that result in a more negative outcome than the initial determination. (Data for these decision are not separately maintained).

B. Beneficiary Access and Expense

Comment: Providers generally will not always know for certain whether their services will be covered under Medicare. Without the favorable presumption, pressure will be created either to refuse to provide marginal services or to bill beneficiaries as private patients. One commenter stated that avoidable deaths might result.

Response: Due to beneficiary safeguards, we do not believe that Medicare beneficiaries will be denied access to care. We base this on our belief that providers will not want to risk HCFA sanctions that include termination of their participation in the Medicare program, and that they will either furnish services to Medicare beneficiaries, or will properly issue notices of noncoverage. A beneficiary who receives such a notice and believes that services should be furnished to him or her can then request a formal determination from HCFA. The authority for review of a hospital's notice of noncoverage is under § 412.42(c) for a notice issued by a prospective payment hospital and under § 405.308(b) for a hospital that would be a prospective payment system hospital except for its participation in a state reimbursement control system or demonstration project. Although not provided for in regulations, beneficiaries also may seek review of admission notices, preadmission notices, and continued stay notices. PROs perform these reviews under authority contained in their contracts with HCFA.

More specifically, the regulations at §§ 489.53(a)(2) require that a Medicare participating provider that places restrictions on the persons it will accept for treatment must either exempt Medicare beneficiaries from those restrictions or must apply them to Medicare beneficiaries in the same manner as to all other persons seeking care. Failure to comply with this provision is cause for terminating the participation of the provider in the program. Under § 412.42 of the regulations, if a Medicare beneficiary elects to receive care and have a claim submitted to Medicare, the hospital, in order to avoid being held liable, must furnish a written notice to the beneficiary or to the person acting on behalf of the beneficiary, advising that Medicare will not pay for the services. If such a claim is submitted at the request of the beneficiary, the HCFA medical review entity reviews the claim to make sure that the hospital is not making incorrect coverage decisions. PROs and intermediaries routinely review a sampling of the providers' notices of noncoverage for which beneficiaries have not requested a formal HCFA determination.

In any case where the provider had denied the admission and failed to issue a notice of noncoverage, the provider will be found liable under the limitation of liability provision. A provider abusing

the use of written notices of noncoverage so that the notices preclude or discourage the admission of eligible Medicare beneficiaries for covered services would be found in violation of its Medicare agreement not to discriminate against Medicare beneficiaries, and could be terminated from the program on these grounds.

Comment: If the favorable presumption were eliminated completely, the increased risk in accepting Medicare beneficiaries would force SNFs to consider withdrawing from the Medicare program. Many SNFs already have waiting lists, and they question whether the volume of clearly covered days would justify program participation.

Response: We have no data on which to project possible decisions by SNFs to eliminate their participation in Medicare. Our January 1985 report to Congress, *Study of the Skilled Nursing Facility Benefit under Medicare,* based on 1980 data, suggested that retroactive denial of Medicare claims adversely affected participation by SNFs in the Medicare program. The report makes clear, however, that a number of Federal and State policies play a larger role in limiting the supply of beds available to Medicare patients needing skilled nursing services. Nevertheless, as of July 1985, 6,451 SNFs were participating in Medicare. This represents an eight percent increase since July 1984.

With the shortening of hospital stays under the prospective payment system (discussed below in section III.H), there may be a greater need for skilled nursing care. We believe that for virtually all of these shorter hospital stay patients, SNFs are able to make clear judgments concerning whether skilled nursing care is covered under Medicare. Therefore, given this point, the low percentage of denials for most SNFs, and the availability of intermediary consultation for questionable cases, we do not believe that SNFs will withdraw from Medicare solely because of this regulation.

Comment: If beneficiaries are denied services more frequently, they will be forced to appeal the denials, which will cause them and HCFA to spend additional money, and the beneficiaries may have to delay obtaining needed services.

Response: We agree that due to an increase in the number of denials there may be an increase in the number of beneficiaries who file appeals. However, the beneficiary does not incur any significant cost in filing a request for reconsideration (or a request for a hearing if the beneficiary is dissatisfied with a reconsidered determination) since the beneficiary merely makes a written request under, for example, § 473.18(a) for hospital care, and the beneficiary does not bear any expense for duplication of the provider records. In addition, for services furnished before receipt of a written notice of noncoverage, the beneficiary is not liable for payment under § 405.334.

We have already discussed above our reasons why we do not believe that a provider will deny a Medicare beneficiary access to care. Moreover, if the initial denial is made by a PRO prior to an elective hospital admission, or after the beneficiary is an inpatient (that is, before a procedure is performed), an expedited reconsideration is available under 42 CFR 473.32, under which the PRO must complete its reconsidered determination within three working days.

The cost to HCFA for processing additional reconsiderations is discussed in section VI below.

C. Coverage Decisions Made by Attending Physicians

Comment: Because providers cannot control a physician's admission decisions and other coverage decisions, HCFA should hold the attending physician, rather than the provider, liable for a poor coverage determination that results in a noncovered admission or a noncovered extended stay in a hospital subject to the prospective payment system.

Response: There is no authority in section 1879 of the law to adopt this suggestion. If a provider believes that the inpatient care that a physician proposes to provide is medically unnecessary, it may protect itself by notifying the patient so that it will not be held liable.

D. Denial Notices and Notices of Noncoverage

Comment: If a medical review entity finds that a furnished service is noncovered, the notice to the beneficiary, provider, and practitioner should clearly define which services are noncovered and why these services would not be covered in the future for this patient or any other Medicare beneficiary.

Response: We agree that denial letters need to be understandable to beneficiaries, providers, and physicians. The HCFA regional offices monitor denial notices issued by PROs and intermediaries to assure that they are both understandable and accurate and that the notices explain why a claim was denied. In addition to the existing model denial notices used by intermediaries, model denial notices are being developed for use by the PROs.

Comment: A provider should not be allowed to furnish a notice of noncoverage to a beneficiary. There is a conflict of interest when it does so because the beneficiary will be held liable after he or she has received the notice of noncoverage.

Response: Since Medicare makes payment to the provider when the provider furnishes services to a Medicare beneficiary, a provider is responsible for assuring that it only provides services that it knows to be medically reasonable and necessary and that do not constitute custodial care. A provider must inform a beneficiary of noncoverage when it has reason to believe the services to be furnished do not meet Medicare's coverage requirements. If a beneficiary has been informed by the provider in writing that Medicare will not cover the services in question, HCFA considers the beneficiary to have known of the noncoverage of services. Thus, should services be furnished and the claim denied, payment would not be made under section 1879 of the Act. The commenter implies that providers will indiscriminately advise beneficiaries of noncoverage in marginal cases to protect themselves from liability under section 1879 of the Act. We do not believe that this will occur because of the beneficiary safeguards discussed in the responses in IV.B, above.

Not allowing a provider to issue written notices of noncoverage in appropriate situations would deprive the provider of protection against liability if the furnished services are later denied because they were unreasonable, unnecessary or constituted custodial care.

The provider's notice of noncoverage must advise the beneficiary of his or her right to request a formal determination from Medicare if the beneficiary disagrees with the provider's notice of noncoverage. HCFA is monitoring the use of provider notices of noncoverage very closely. In extreme cases, a provider found to be abusing the written notice procedures could be terminated from the program on the grounds that it is unfairly discriminating against Medicare beneficiaries.

E. Provider Representation of Beneficiaries

Comment: HCFA should allow a provider to represent a beneficiary in a limitation of liability appeal. A provider is best able to do so because of its familiarity with the Medicare rules; otherwise a beneficiary (who is less

familiar with Medicare rules) may not appeal a limitation of liability determination that is erroneous. Even though HCFA claims that there may be a conflict of interest in these kinds of situations, it is unproven.

Response: The issue of allowing providers to represent beneficiaries in order to pursue an appeal is currently being litigated in U.S. District Court. (*National Association for Home Care, et al.* v. *Heckler*, No. 84-957 (D.D.C. filed March 26, 1984).)

We maintain that permitting a provider to act as the beneficiary's representative is of dubious value to the beneficiary. There is potential conflict of interest between a provider and a beneficiary because of the provider's interest in appealing a limitation of liability determination. Also, a provider's and beneficiary's interest may conflict under section 1870 of the Act, because of beneficiary rather than a provider is considered to have received an overpayment if the provider can show that it was without fault and acted in good faith. Further, a serious conflict of interest arises when a provider represents a beneficiary in a claim for indemnification under section 1879(b) of the Act since the provider may be relieved of liability for the overpayment by showing that the beneficiary knew that the services were not covered. In that case, no Medicare payment would be made, but the provider could be permitted to bill the beneficiary for its charges, for example, under §412.42.

F. Increases in Costs and Paperwork for HCFA and Providers

Comment: Eliminating the favorable presumption will require more paperwork for providers, who will have to submit more extensive documentation in each questionable case, which will place an additional cost burden on providers and will result in cash flow problems due to delays in processing the appealed cases.

Response: It is true that providers may have more paperwork in questionable cases in establishing that the beneficiary required covered services, and if coverage is denied, in showing that the providers did not know, nor could reasonably have been expected to know, that the services were not covered under Medicare. However, of the total number of bills processed by intermediaries in FY 1984 for all provider services, including outpatient services, only 0.22 percent (that is, about one-fifth of one percent) were paid under the limitation of liability provision.

Of the total number of inpatient hospital bills processed in FY 1984, only 0.17 percent (that is, less than one-fifth of one percent) were paid under the limitation of liability provision, either under the favorable presumption or on a case by case review. This represents a total of only 21,596 limitation of liability cases out of a total of 12.1 million inpatient hospital bills. The total number of SNF bills paid under this provision was 8,596 out of a total of 865,109 bills or one percent. The total number of limitation of liability determinations for HHAs was 45,856 out of a total of 5.2 million HHA claims or about 0.9 percent (that is, less than one percent).

We project that from March 15, 1986 through September 30, 1986, there will be 6.86 million inpatient bills, 0.49 million SNF bills, and 3.27 million HHA bills. Of these, it is estimated that not more than 20,580 hospital inpatient bills, 103,390 SNF bills, and 55,590 HHA bills will be subject to limitation of liability considerations.

Because the paperwork associated with appealing cases previously subject to favorable presumption will be spread out among all providers who are appealing decisions and who previously would have qualified for the presumption, we expect that the additional paperwork for an individual provider will be minimal.

With regard to cash flow problems, providers receiving interim reimbursement under the periodic interim payment method of reimbursement (PIP) will not experience immediate cash flow problems. This also includes PIP hospitals under the prospective payment system. These estimated payments are subject to final settlement. Thus, only at the time of settlement will the financial effect of eliminating the favorable presumption be felt by providers that are paid under the PIP method (and then only to the extent that cases which previously would have been paid under the presumption were appealed by the provider and were denied or were not yet adjudicated). The number of claims in which adjudication might still be pending at the time of settlement should be few, if any, given the requirement for prompt action on appeal (see below).

Comment: PROs are already experiencing backlogs in meeting their current review commitments and a case-by-case review for limitation of liability cases will aggravate the situation.

Response: Because of delays in receipt of the data from the Professional Standards Review Organizations and the intermediaries' medical review personnel that were needed by the PROs to review the claims, some PROs did have backlogs. However, this problem has now been alleviated. In addition, if a hospital files a request for reconsideration with a PRO, the PRO has 30 working days to make the reconsidered determination and send written notices to the hospital, practitioner, and beneficiary. If a beneficiary who is still an inpatient or whose preadmission review by a PRO resulted in a denial, files a request for an expedited reconsideration, the PRO must complete its determination within three working days. The HCFA regional offices are closely monitoring the PROs' appeals activity on an ongoing basis.

Comment: Eliminating the favorable presumption and substituting case by case review will increase the number of provider appeals, thereby increasing the cost to both the government and the providers in addition to increasing processing time. The time and cost required for a provider in pursuing a reconsideration and appeal may act as a deterrent. In addition, the cost analysis contained in the proposed rule greatly underestimated the cost impact on providers because the analysis underestimated the cost to providers for appeals.

Response: We agree that eliminating the favorable presumption will probably initially increase the number of reconsiderations and increase the processing cost to the Federal government. In fact, HCFA is assuming on the basis of a "worst-case" estimate that 85 percent of all claims denied for medical reasons will result in reconsiderations at an additional administrative cost to the Federal government of $13 million for FY 1987. This is considerably higher than the current rate of requests for reconsiderations, which was only 6.8 percent of all Part A medical denials.

We do not agree that the costs to providers of filing appeals are so great that they deter providers from pursuing their appeal rights. We base this conclusion on the fact that during CY 1984 the average Medicare payment per hospital bill was $3,290, per SNF bill $630, per HHA bill $380. As discussed in section VI below, it is not possible for us to determine the cost to a provider for a reconsideration. However, we believe that a provider's cost for a reconsideration is much less than the average Medicare Part A payment and should not deter a provider from filing for a reconsideration.

G. Coverage and Limitation of Liability Determinations Made by PROs

Comment: HCFA needs to monitor PRO performance to determine the adequacy of PRO review procedures before we publish our final limitation of liability regulations.

Response: PROs are monitored on an ongoing basis. The HCFA regional office project officers perform onsite review at each PRO at least quarterly. In addition, HCFA developed a detailed monitoring system, the PRO Monitoring Protocol and Tracking System (PROMPTS), which addresses the issue of whether the PRO is applying screening criteria correctly and making accurate determinations. Specific PRO determinations are now being monitored by an independent organization that is validating PRO medical review decisions, that is, admission review, DRG validation, and length of stay determinations. Appropriate actions, including, but not limited to, intensified monitoring, withholding of funds, and so forth, will be taken against a PRO that is not making accurate decisions in performing reviews.

H. Impact of the Prospective Payment System

Comment: Although HCFA may be correct in asserting that the implementation of the prospective payment system reduces the number of hospital cases subject to limitation of liability under section 1879 of the Act, there is no reason to believe that the amount of payment under the limitation of liability provision has been reduced because not enough time has passed under the new payment system to determine that this is so.

Response: It is true that some denials under the prospective payment system may represent large amounts of money in cases where the entire stay is found not to be reasonable and necessary. In these instances, a hospital may still show in a particular case that it did not know nor could reasonably have been expected to know that the care was not covered. However, we expect denials under the prospective payment system to involve comparatively few length of stay cases. Prior to implementation of the prospective payment system there were many cases where the admission was justified, but some days were not covered because the care was no longer reasonable and necessary. This kind of case was previously the major area requiring coverage determinations in which limitation of liability could apply. Except for outlier cases, we anticipate that most of the hospital denials under the prospective payment system will involve inappropriate admissions where the basis for denial by the PRO is clear cut and where we would expect that the provider should have known that the admission was inappropriate.

In FY 1984, the first year of the new payment system, only 0.17 percent (that is less than one-fifth of one percent) of inpatient hospital bills processed were paid under the limitation of liability provision.

Comment: The need for HHA and SNF services has increased because the prospective payment system has reduced the average length of a hospital stay, thereby increasing the potential for more denials of post-hospital services provided by HHAs and SNFs.

Response: While we agree that hospital stays have tended to be shorter under the prospective payment system than under the cost reimbursement system, we do not agree that shorter hospital stays lead to increased denials for SNFs or HHAs or have any other adverse impacts. We believe that one impact of the prospective payment system on Medicare will be to make it more likely that SNF and HHA coverage determinations are correct. That is, we expect that it will be easier for SNFs and HHAs to determine whether services they propose to provide are covered. This is because the prospective payment system has made both hospitals and physicians more sensitive to the need to evaluate continuously a patient's condition and the type and level of services that the patient requires in order to determine the earliest point at which care can be appropriately provided at a lower level (that is, in an SNF or by an HHA at home). In addition, the prospective payment system has given hospital social workers and discharge planners a greater incentive to be familiar with available alternatives to institutional care than under cost reimbursement. There is some anecdotal evidence to suggest that these factors have led more physicians to become familiar with services furnished by SNFs and HHAs. Of course, a physician's concern with the continued quality of patient care also leads to physician involvement in the development of home health plans of care. Therefore, we believe that an SNF or an HHA will be receiving more information about a patient's condition and needs than was received previously and, thus, will be better able to determine potential coverage.

Before the prospective payment system existed, some hospitals sometimes retained patients inappropriately; that is, hospitals furnished services that could appropriately have been furnished in an SNF or in the home by an HHA. However, the incentives provided under the prospective payment system are such that a patient is likely to be discharged to an SNF or to home care when the need for skilled nursing care or therapy outside the hospital is clearly supportable. Therefore, the operation of the prospective payment system will increase the likelihood that SNFs and HHAs will be receiving patients who clearly require covered care. This should have the effect of lowering the percentage of denied bills.

In addition, as fewer SNF and HHA patient bills are denied, because the services are covered, SNFs and HHAs will no longer have an incentive to bill for marginal services for beneficiaries that no longer need Medicare covered care.

Comment: The prospective payment system has caused an increase in the discharge of acutely ill patients from hospitals. This is increasing the utilization of skilled nursing care and home health care. SNFs and HHAs must make coverage determinations as quickly as possible and the leeway afforded by use of a favorable presumptive mechanism is necessary for the continued financial stability of SNFs and HHAs.

Response: We agree that many Medicare beneficiaries discharged from hospitals under the prospective payment system will clearly need covered skilled nursing or home health services. During the longer hospital stays prior to the implementation of the prospective payment system, acute inpatient hospital care was often given that could more appropriately have been given on a post-hospital basis. The need for post hospital care (that is, SNF and HHA services) should be more readily recognizable where a hospital is under the prospective payment system. Thus it should be easier for SNFs and HHAs to determine more expeditiously whether their services will be covered under Medicare when they are asked to treat a patient who has just been discharged from a hospital under the prospective payment system because such a patient is more likely to require Medicare covered post hospital services than might have been the case prior to implementation of that system.

I. Other Reasons To Retain the Favorable Presumption

Comment: HCFA should retain the favorable presumption because it offers protection against the risk of provider admission denials in cases in which a provider thought that there was a real

need to admit the beneficiary. Because the practice of medicine is governed by conditions of uncertainty and variability, a provider that furnished services in good faith should be protected from retroactive denials. By removing the presumption, those providers, which in doubtful cases act in the best interest of the patient, would be exploited.

Response: We agree that some uncertainty exists regarding the most effective methods of treatment. This is the reason for section 1879 of the Act. Except on the basis of section 1879 of the Act, the Medicare program pays only for covered services. The medical review entities base their determinations on the rules that distinguish covered care from noncovered care. These rules are found in the Medicare statute (title XVIII of the Act), the regulations (42 CFR Chapter IV), and HCFA instructions that are made available to providers on an ongoing basis. The medical review entities apply the rules to each particular case. Experienced providers should also be able to apply these rules to each particular case to determine whether the services are covered under Medicare. The great majority of providers are able to make accurate coverage decisions most of the time. A provider also can establish in an individual case that it lacked knowledge that the services were noncovered.

Comment: The discussion in the preamble of the proposed rule about the anticipated reduction of length of stay denials due to the prospective payment system applies only to hospitals. Since SNFs and HHAs are not under the prospective payment system and have to make coverage decisions that are more difficult than those made by hospitals, a retention of the presumption for SNFs and HHAs is justified.

Response: We grant that special considerations are involved in making Medicare coverage decisions as to the need for skilled nursing services and home health services that are different than those pertaining to hospital care.

The concept of skilled nursing care (rather than convalescent care, which has a broad meaning to the public) originated with the Medicare program. Because this service was new, we developed very detailed rules concerning skilled nursing care (§§ 409.30—409.35).

As explained above in section IV.A, the Medicare home health benefit is intended as the last stop on the "continuum of care" that frequently begins in the hospital, progresses through the SNF, and ends in the home. National guidelines concerning home health care are contained in some detail in regulations at §§ 409.40–409.43.

In addition, as required by section 1816(e)(4) of the Act (amended by section 2326(b) of Pub. L. 98–369), the workloads for all freestanding HHAs will be processed by only 10 intermediaries nationwide rather than 47 intermediaries nationwide. Also, as noted earlier, HCFA has initiated a standard form for HHAs to submit medical data (Home Health Certification and Treatment Plan, HCFA–485). The use of the new form will improve the uniformity of data used in medical review determinations. Hence, with increased data uniformity, fewer intermediaries, and enhanced intermediary expertise, HHAs will find it much easier to make proper coverage decisions.

We believe that all of these efforts will improve the uniformity of review and warrant elimination of the favorable presumption for SNFs and HHAs.

Comment: A margin for error must continue to be made available to providers. A presumptive mechanism for providers should, therefore, be retained but denial rates at a lower percentage should be substituted for the current denial rates used for providers.

Response: The limitation of liability provisions in section 1879 of the Act provide a margin for error in that a provider is protected against liability if the provider could not have been expected to know that furnished services were not covered. We do not believe that there is a continuing justification for providing an additional margin by retaining the favorable presumption even with reduced denial rates.

After nearly 20 years of experience with the Medicare program, providers working closely with their intermediaries and PROs have significantly reduced the percentage of medical determinations subject to coverage disputes. This fact is borne out by the previously cited data which showed that the great majority (over 80 percent) of all categories of providers are able to qualify for a favorable presumption. It is not unreasonable to expect that this past provider performance will improve even further in the future as a result of the initiatives HCFA has under way to improve the consistency of claims review.

Comment: As HCFA begins phasing out the current intermediaries for all free-standing HHAs and replacing them with 10 regional intermediaries, the elimination of the favorable presumption and substitution of case by case review will create a large increase in the new intermediaries workload that will result in a tremendous backlog of claims.

Response: We grant that the change in administration of the home health benefit will entail some adjustments as the 10 regional intermediaries assume the entire national workload of freestanding HHAs. However, this consolidation will result in greater specialization in regard to home health benefits, which should aid significantly in the efficient administration of the home health benefit. In addition, the 10 intermediaries will assume the national workload over a one-year period. Therefore, we do not expect any backlog of claims to develop due to this change.

J. HCFA's Proposal is Contrary to the GAO Recommendation and the Intent of Congress

Comment: HCFA's proposal to discontinue use of the favorable presumption is contrary to GAO's recommendations because GAO found that "reasonableness and medical necessity of services often are not clear cut and therefore providers acting in good faith should not be penalized by having their claims for payment denied."

Response: GAO did recommend as one alternative that HCFA consider modifying the limitation of liability rules so that the favorable presumption would be eliminated and the applicability of the limitation of liability provision be determined on a case by case basis. In fact, the approach we are adopting is one of three alternative recommendations made in the GAO report (GAO/HRD–83–38, March 4, 1983). The GAO quotation was taken out of context by the commenter. GAO was merely reporting that the providers argue that reasonableness and medical necessity often are not clear cut issues and that providers acting in good faith should not be penalized by having their claims denied. GAO did not reject the elimination of the favorable presumption.

Comment: When GAO suggested that HCFA could reduce the HHA denial rate from two and one half percent to a lower percentage rate in order for an HHA to be eligible for a favorable presumption, GAO was not aware of the 32.4 percent reconsideration reversal rate of intermediary determinations involving HHA coverage issues.

Response: Our latest data indicate that in CY 1984 about 30.3 percent (less than one third) of all reconsidered HHA coverage determinations resulted in reversals. However, because reconsidered determinations were made for only 5.5 percent (about 3,448 of 63,000) of initial determinations, only 1.7

percent (about 1,044 of 63,000) of all initial denials were reversed by reconsidered determinations. Although GAO is knowledgeable about HCFA procedures, it may be true that GAO did not take into consideration the reversal rate of intermediary determinations concerning HHA coverage issues. However, we do not consider this as flawing the GAO recommendation since reversed determinations as a percentage of total denials are low. We discussed this matter at greater length above in the section concerning provider reconsideration reversal rates.

Comment: HCFA's proposed rule is against the intent of Congress to protect providers as well as beneficiaries from liability for the cost of noncovered services ordered by staff physicians whose practices cannot be controlled by the providers.

Response: The favorable presumption is only an administrative mechanism. Its elimination still leaves in place the basic protection for providers available under section 1879 of the Act, as authorized by Congress. Clearly, the intent of the original limitation of liability legislation was to hold the beneficiary harmless for furnished services that were not medically necessary and reasonable or constituted custodial care if the beneficiary was not at fault. Congress intended to shift the financial liability to the provider unless the provider utilized due care in applying Medicare policy (S. Rep. 92–1230, 92d Congress, 2d Session, 294 (1972)). This report by the Senate Committee on Finance also stated that when payment is made under the limitation of liability provision, Medicare is to make certain that the provider and patient are put on notice that the furnished service is noncovered so that in subsequent similar cases neither the beneficiary nor the provider could be found to be without fault. The Senate Finance Committee clearly indicated that its intent was to limit Medicare's liability whenever the provider or beneficiary has knowledge that a service is noncovered: "Thus, the Government's liability would be progressively limited." Congress has intended since 1972 that the Medicare payment for noncovered care would be reduced and that providers or beneficiaries who knew services were not covered would be held liable.

The favorable presumption was added by HCFA as an administrative device, which can be modified or eliminated as changing circumstances warrant. Concerning the comment about decisions by staff physicians, providers should make their personnel (including their staff physicians) aware of Medicare coverage requirements.

K. Rights of a Provider

Comment: Whenever HCFA finds that a provider has acted in good faith in furnishing noncovered services, the provider should be allowed to charge the beneficiary.

Response: To permit a provider to bill a beneficiary if the provider acted in good faith is counter to the congressional intent in passing the original limitation of liability provision. As quoted elsewhere in this preamble, Congress intended that the beneficiary would be held harmless if he or she received services that were not reasonable or necessary for the diagnosis or treatment of an illness or injury or if the services were found to constitute custodial care and the beneficiary was without fault. If the provider is also found to be without fault, the liability is borne by the Government.

A provider can charge a beneficiary for these services if the provider notifies the beneficiary in writing of the noncoverage of the services before they are furnished. See for example § 412.42, which involves notice by a hospital under the prospective payment system.

Comment: It is unfair that, under the Part A reconsideration and appeals procedures, only in the reconsideration proceeding may a provider argue that its liability should be waived because a furnished service *is covered* under Medicare. A provider should also have the right to make this argument during an appeal before an ALJ instead of being allowed to argue only that *it did not know* that a furnished service was not covered.

Response: The issues that can be raised at the hearing level and the question of who can raise them are specified by statute. Section 1155 of the Act states that a reconsideration is available to any party to a PRO denial, that is, the beneficiary, hospital, or practitioner. However, section 1155 of the Act also specifies that only the beneficiary is entitled to further appeal of coverage determinations made under title XI of the Act, that is, determinations involving the issues of medical necessity and appropriateness. However, both the liable provider and practitioner are entitled under section 1879 of the Act to an administrative hearing on the issue of whether they knew, or should have known, that the furnished services were not covered or constituted custodial care. These appeals by providers and practitioners are available only if the beneficiary is not going to exercise his or her appeal rights on the issue of whether the beneficiary knew or should have known that the furnished services were not covered or constituted custodial care.

Under § 405.710(b), if an intermediary denies a provider's claim, and finds the provider or the beneficiary liable, the provider has all the appeal rights of the beneficiary, including an appeal on the issue of coverage. However, the provider has these appeal rights only if the beneficiary will not exercise his or her appeal rights.

L. Patterns of Inappropriate Utilization

We received several comments concerning implementation of the patterns of inappropriate utilization provision contained in the last sentence of section 1879(a) of the Act (enacted by section 145 of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248)). Our intent in proposing to implement this provision was to provide medical review entities with an additional means of denying program payment under the limitation of liability provision to a provider that furnished noncovered care and that continued the practice after being notified that the services were noncovered. This provision was to apply even when the provider qualified for the favorable presumption. However, we have decided not to finalize the regulations concerning this provision.

Elimination of the favorable presumption and the use of case by case review preclude the need for application of the pattern of inappropriate utilization provision. This is so because now each specific case will be under review. Thus, the question of whether the provider had knowledge that a specific service was not covered will always include situations in which the provider was previously notified that the same or similar service was not covered.

The comments we received about the "patterns" provision generally concerned the following matters:

- Because the proposed rule was unclear about what HCFA considers to be a pattern of inappropriate utilization and what will be considered corrective action, both terms should be clarified in the regulations text of the final rule.
- Providers would benefit from a followup PRO determination after the end of the 30-day period extended to a provider for correction of a pattern of inappropriate utilization.
- Allowing a PRO to require a provider to submit a description of corrective steps violates section 1801 of the Act because requiring a description of corrective steps will interfere with

management of a facility, which is prohibited by section 1801 of the Act.

• HCFA should not establish a national basis for identifying a pattern of inappropriate utilization because circumstances differ in each case and the views of an admitting physician may differ from those of a physician hired by the PRO to review a case.

As a result of our decision not to finalize the paragraph of the regulations that would have implemented the patterns of inappropriate utilization provision, it is unnecessary that we respond to the comments. However, one comment reflected a misunderstanding about the way in which the patterns provision could be used. The comment and our response are as follows:

Comment: The favorable presumption should be revoked only when actual notice to a specific provider is given that a pattern of inappropriate utilization persists despite efforts to work with the provider toward making corrections.

Response: The commenters have confused section 145 of Pub. L. 97–248 with the administrative mechanism, the favorable presumption, that HCFA *used in addition to case by case review* to determine whether a provider should be liable for a furnished noncovered service. The key point is that section 145 of Pub. L. 97–248 does not preclude the elimination of the favorable presumption, which was never required by Congress.

M. The 30-day Comment Period Was Too Short and We Should Have Provided Public Meetings

Comment: The 30-day comment period did not provide enough time for the public to comment effectively on so many complex, critical policies. In addition, public meetings should have been arranged for discussion of the proposed rule.

Response: We publish a proposed rule in the **Federal Register** so that interested persons are provided an opportunity to participate in the rulemaking process by submitting correspondence to the agency. Similarly, we consider relevant comments and discuss in the final rule the basis and purpose of the public comments. Although there is no specified minimum time for the length of the public comment period, the courts have consistently held that a 30-day comment period is sufficient.

We received 248 items of correspondence from hospitals, SNFs, HHAs, practitioners, suppliers, organizations, advocates, members of Congress, and PROs.

The issues raised covered a broad range of concerns, as demonstrated by the discussion of the comments, above. Therefore, we do not believe that the length of the comment period was inappropriate or that holding a public meeting would have enabled the public to make comments that they could not have made in writing.

N. Impact Analysis Did Not Adequately Assess Effects of Proposed Rule

Comment: By not providing an impact analysis in a proposed rule that, if adopted, would have an effect on the economy of $100 million and impact significantly on a substantial number of providers, HCFA violated Executive Order 12291. Therefore, before implementing any changes to the limitation of liability provisions, HCFA should publish a proposal that conforms with Executive Order 12291.

Response: In promulgating new regulations, a Federal agency is required to adhere to regulatory principles that require decisions to be based on the best available information concerning the consequences of the proposed action. In addition, an agency must select an approach that maximizes aggregate net benefits to society.

An agency must also prepare and publish an impact analysis if a proposed rule—

• Meets at least one of the threshold criteria of section 1(b) of Executive Order 12291 (an annual effect on the economy of $100 million, a major increase in costs or prices, or a significant adverse effect on competition, employment, investment, productivity, innovation or competition with foreign-based enterprises); or

• Would have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612), if applicable.

In an impact analysis under either procedure, an agency must discuss cost, benefits, number of affected entities, and alternative approaches considered and rejected.

In preparing an analysis, if we determine, as we did in the proposed rule, that none of the criteria is met, our practice is to explain how we concluded that none of the criteria is met and to provide adequate documentation to support our determination.

We believe that we complied with the provisions of the Executive Order and the Regulatory Flexibility Act by using our best available data in developing the estimate in the proposed rule. In this final rule, we have developed an impact analysis that reflects issues and concerns raised by various commenters, as well as our best estimate of the effects of this final rule.

O. Minimal Savings for HCFA Versus Hardship to Providers

Comment: HCFA did not seem to consider the amount of hardship the proposed rule would create for providers while only increasing savings to HCFA by an expected $48.3 million.

Response: Our estimated savings have been revised based on the latest data available. Regardless, we believe these savings and the need to refine good management practice for the Medicare program warrant the elimination of the favorable presumption. These considerations are reinforced by current Federal budget constraints and the need to strengthen the integrity of the Medicare trust funds. This will provide a remedy for the situation in which the Medicare program makes payment for noncovered services even though a provider, practitioner, or supplier knew or should have known that a furnished service is not covered. Any provider stress that results should be limited to the phase-in period of the new procedure. We expect the impact on any individual provider to be minimal. We do not believe it is reasonable to continue to pay substantial sums of money for noncovered services if the provider knew or could reasonably have been expected to know that the services were not covered by Medicare.

V. Summary of Changes to the Regulations

• We eliminated §§ 405.195 and 405.196, the sections that contained the criteria that providers had to meet to receive a favorable presumption.

• We redesignated § 405.331 as § 405.332.

• A new § 405.334 has been added to replace former § 405.332(a). This section contains the rules for determining whether a beneficiary who received noncovered services knew that the services were not covered by Medicare.

• A new § 405.336 has been added to replace the old § 405.332(b). It applies when a determination is made as to whether a hospital, an SNF, or an HHA has knowledge that furnished services were not reasonable and necessary or constituted custodial care. We replaced the term "other person" by "practitioner or supplier" for greater specificity.

• We added a criterion in § 405.336(d) under which a provider is deemed to have knowledge that a service is not covered if it informed the beneficiary that the service to be furnished is not

covered. This criterion was issued in 1978 in Medicare administrative manuals to all Medicare providers.

• We eliminated the proposed criterion under which we would have considered knowledge based on a provider's "ongoing relationship with the Medicare program" because it is covered under the new § 405.336(e)(1). Under this new paragraph, we will find that a provider, practitioner, or supplier has knowledge based on its receipt of HCFA material.

VI. Regulatory Impact Analysis

A. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in:

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices, for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, we treat all providers and suppliers as small entities.) Under both the Executive Order and the Regulatory Flexibility Act, these analyses must, when prepared, how that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise assure that the regulations are cost-effective.

In the proposed rule published February 12, 1985, the preamble discussion noted the potential effects of the proposed regulations. We stated both the projected budget impact and our determination that a substantial number of providers would not be affected significantly. We also included a brief discussion of policy alternatives considered and reasons for not selecting them. For purposes of this final rule, we are presenting an impact analysis that represents the anticipated effects of the rule on the Medicare program, providers, and beneficiaries.

Medicare Program

The Medicare program will realize both benefits and costs from the implementation of this final rule. One primary benefit is assuring the continued integrity of the Medicare trust funds. This will be accomplished by the elimination of the favorable presumption and is signified by the projected benefit payment savings resulting from decreased amounts of payments for noncovered care. Assuming implementation effective March 15, 1986, we estimate gross benefit savings for the first five affected Federal fiscal years (FYs) to be as follows:

	Gross savings (millions)[1]
Fiscal year	
1986	$47
1987	93
1988	104
1989	114
1990	125

[1] These estimates and the figures in the following tables are rounded to the nearest million dollars. Addition may appear to be inexact due to this rounding.

Most of the savings will result from reduced payments to hospitals, but other providers will also be affected. This is illustrated by the apportionment of savings for the first full fiscal year (FY 1987) among affected providers.

	Million[2]
Hospitals	$50
Skilled Nursing Facilities	18
Home Health Agencies	22
Other	4
Total	93

[2] The favorable presumption has been applied to comprehensive outpatient rehabilitation facilities, freestanding rehabilitation centers, hospices, rural health clinics, and organ transplant centers, although the regulations did not provide for this. The change to our current regulations will generate savings from these providers as noted here in the analysis.

These gross savings will be offset to some extent by expected increased costs to administer case by case review for providers. We project loss of gross benefit savings due to reconsideration reversals and increased costs to process additional provider claims that will no longer qualify for waiver. Specifically, we project the following "worst case outcome" for program costs and loss of savings for FY 1987:

[Dollars in millions]

Provider type	Reconsideration [3] reversal dollar amounts	Processing [4] costs	Total [5] costs
Hospital:			
Inpatient	$11	$2	$13
Outpatient	3	1	4
Total [6]	13	3	17
Skilled Nursing Facility	4	2	6
Home Health Agency	7	7	14
Other	1	(6)	2
Total [5]	25	13	38

[3] The reconsideration reversal amounts reflect estimated provider reversal rates based on the few bills that are filed for reconsideration currently. The rates reflect both full and partial reversals as well as determinations against the parties filing for reconsideration.

[4] Our assumptions for calculating FY 1987 processing costs were: (1) Additional claims, to the nearest thousand, to be processed in FY 1987: hospital–57,000, SNF–17,000, HHA–76,000, and other–13,000; (2) An estimate of denials that will result in reconsiderations (85 percent); and (3) Cost per reconsideration of about $100 per case for inpatient hospital services, about $115 per case for SNFs and HHAs, and $40 per case for outpatient hospital services and other providers.

[5] Addition may appear to be inexact due to rounding.

[6] Less than $0.5 million.

However, these estimates do not take into account the changes of provider behavior that may be expected to result from the increased incentive for providers to ensure that they bill only for covered services. We do not expect that these worst case estimates will materialize in full. To the extent that the proportion of reconsiderations resulting in reversals of denial determinations declines from current levels, net savings should approach our estimated gross savings.

Other benefits that accrue to the Medicare program can be characterized as management improvements. More precisely, the elimination of the favorable presumption will: (1) Reaffirm that we will pay for noncovered services only if there is no reason for the provider to have knowledge of noncoverage; (2) provide support for other initiatives intended to improve the consistency of claims review and the application of coverage guidelines (for example, new home health medical information form (HCFA–485) being submitted to intermediaries and the transferring of all free-standing HHAs to 10 regional intermediaries); and (3) give incentives for improved documentation accompanying the initial claims, since it is advantageous for a practitioner, provider, or beneficiary to submit adequate documentation of services provided or received.

While the Medicare program will incur costs through implementation of this rule, we believe the benefits of Trust Fund integrity and management improvements exceed the projected costs previously discussed.

Providers

These final regulations remove the favorable presumption from those providers that currently qualify for the favorable presumption and will generate certain effects on all providers. First, we anticipate that this modification will result in a gross reduction of benefit payments to affected providers. For hospitals, we estimate a gross reduction of $50 million in FY 1987 benefit payments. The reduced benefit payments are apportioned between inpatient and outpatient services as follows:

	Million
Inpatient	$41
Outpatient	9
Total	50

Note that this reduction in expenditures results from nonpayment for noncovered services, not a reduction of amounts paid for covered services. It represents a reduction of only 0.001 percent from projected inpatient and outpatient Medicare benefit expenditures to hospitals in FY 1987.

We also estimate a gross reduction in FY 1987 benefit payments of $18 million for SNFs, $22 million for HHAs, and $84 million for other providers due to the elimination of the favorable presumption. These estimated decreases in FY 1987 benefit payments, as with hospitals, represent insignificant reductions in estimated total Medicare benefit payments to these providers. In total, we estimate a gross reduction in benefit payments to all affected providers of $93 million in FY 1987.

For each provider we expect the estimated gross reduction in benefit payments to be partially offset by payments resulting from those reconsideration reversals, in full or part, that are decided in favor of the provider. To illustrate, we estimate the reconsideration reversal payments to each provider type in FY 1987 [7] as follows:

	Million
Hositals:	$13
Skilled Nursing Facility's	4
Home Health Agency's	7
Other	1
Total	25

[7] As disussed above, these are worst-case estimates that may not be fully realized. The corresponding estimated figures for FYs 1988 through 1990 are $28 million, $30 million, and $33 million, respectively.

A second impact on providers is increased paperwork associated with initiating additional reconsideration. However, we cannot determine expected provider costs, either in the aggregate or on an individual basis, resulting from the increased paperwork. This is due to several factors including: (1) The additional incremental amount of paperwork that will have to be submitted to the fiscal intermediaries may vary from case to case; and (2) the flexibility afforded to providers in presenting their reconsideration requests. For example, a provider may mail documentation to its fiscal intermediary, travel to and meet onsite with its intermediary, or in some cases, may submit the pertinent information by way of a telephone conversation. Thus, we cannot establish a base from which to project providers' costs associated with reconsiderations.

A further measure of the potential incremental cost of the paperwork burden for affected providers is that in FY 1984 only 0.22 percent (112,000 bills) of 49.9 million bills processed were paid under the limitation of liability provision. Thus, although this change in our policy will cause an increase in the number of bills denied and submitted for reconsideration, accompanying paperwork burden will not be significant relative to the total volume of bills submitted by providers.

Therefore, while participating providers could be affected by this regulation, for the reasons just stated, we do not believe that they will be affected significantly by the estimated reduction in payments. In addition, while we cannot estimate the costs associated with an incremental increase in paperwork burden, we do not expect it to be significant.

Beneficiaries

Earlier in the preamble, we discussed two key aspects of possible effects on beneficiaries—access to care and personal expense. In addition to what was discussed in section III.B, we include the following information regarding beneficiary impact.

There is no immediate indication that, as some commenters suggested, providers will drop out of the program due to these changes to our regulations. Our data show that while the total percentage or payments made under the limitation of liability provision has been declining, the number of providers participating in the program has increased. FY 1984 payments under the limitation of liability provision approximated only 0.14 percent of total provider benefit payments. Thus, the changes to our current policy regarding limitation of liability should have minimal impact on the financial incentives to continue participating in the Medicare program. Therefore, we expect needed access to care to be maintained. Furthermore, as noted earlier, we believe that there are sufficient program safeguards and an adequate application of existing coverage guidelines by a vast majority of providers to ensure that beneficiaries should not be denied needed access to care. Examples of existing safeguards include: Timely notices of noncoverage; various management improvements aimed at more consistent interpretations of coverage issues; and further improvements in the management of hospital, SNF, and home health benefits. These and other program initiatives will help maintain access to needed care for all beneficiaries.

Regarding beneficiary expenses, we believe that certain expenses previously related to the provision of noncovered or unnecessary care will be reduced. By eliminating the administrative presumption for hospitals, we expect to create a strong incentive for providers to increase the accuracy with which they apply coverage guidelines. In response to this incentive, we anticipate a reduction in the incidence of noncovered care and associated beneficiary deductible and coinsurance expenses. We expect this reduction to more than offset the additional expense that will be borne by those beneficiaries who might otherwise have benefited from the existing administrative presumption. A potential beneficiary expense is the cost related to filing a reconsideration after a denial is issued. Of all claims submitted for reconsideration in CY 1984, there were only 15,379 reconsiderations initiated by beneficiaries. Therefore, we do not expect a significant number of beneficiary-initiated reconsiderations under these new rules. Although we have no basis to quantify the cost for initiating a reconsideration, just as we cannot quantify provider costs associated with reconsiderations, as discussed above, our program experience suggests that beneficiary costs will not be significant.

In summary, we believe that beneficiaries, as a whole, will not be adversely affected, and will in fact be benefited by these changes in our current policy. We recognize that there will remain questions concerning the HHA and SNF coverage benefits. However, we anticipate that, as many of the improvements in the management of the Medicare program are implemented, the incidence of noncovered care and

related beneficiary expenses will be reduced.

Summary

We believe that these revisions to our application of the limitation of liability for Medicare providers will create numerous benefits that will more than compensate for any costs incurred by the Medicare program, beneficiaries and providers. For example, we noted earlier such benefits as maintenance of the Medicare trust funds and support of other program initiatives aimed at improving the performance of the Medicare program.

While we recognize that some providers will incur costs because of the program changes in this final rule, these costs should not be significant either to individual providers or, in the aggregate, to all providers. Furthermore, most of the incurred costs will be related to the provision of noncovered care.

Alternatives to the policy in this final rule that we considered and rejected include:

• Tightening the denial rate criteria used to determine eligibility for a favorable presumption. However, tightening the denial rate criteria would still allow some providers to receive payment for noncovered services in spite of the Congressional objective of section 1879 of the Act of paying for noncovered services only when the provider and beneficiary actually did not know nor could reasonably have been expected to know that the services were not covered.

• Providing that after a provider furnishes Medicare services for a period of time and gains experience with Medicare coverage determinations, we would require case by case limitation of liability determinations. However, permitting payment for noncovered services, for any length of time, reinforces a misplaced economic-incentive among providers in that we would continue to pay for improper coverage decisions even though it had not been determined that the provider and beneficiary actually did not know nor could reasonably have been expected to know that the services were not covered.

B. Paperwork Reduction Act

Paragraphs (b) and (c) of § 405.334 and paragraphs (b), (c), and (d) of § 405.336 of this final rule contain information collection requirements that are subject to review by the Executive Office of Management and Budget (EOMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). A notice will be published in the **Federal Register** when approval is obtained.

VII. List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

42 CFR Part 405 is amended as set forth below:

Subpart A—Hospital Insurance Benefits

A. Subject A is amended as follows:

1. The authority for Subpart A continues to read as follows:

Authority: Secs. 1102, 1814, 1815, 1861, 1866(d), and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395g, 1395x, 1395cc(d), and 1395hh)

2. The table of contents for Subpart A is amended by removing the titles of §§ 405.195 and 405.196.

§ 405.195 and § 405.196 [Removed]

3. Sections 405.195 and 405.196 are removed.

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

B. Subpart C is amended as follows:

1. The table of contents for Subpart C is amended by redesignating the title of § 405.331 as § 405.332; revising and redesignating the title of § 405.332 as § 405.334, adding the title of a new § 405.336; and revising the authority citation to read as follows:

Subpart C—Exclusions, Recovery of Overpayment Liability of a Certifying Officer and Suspension of Payment

Sec.

* * * * *

405.332 Liability for certain noncovered items or services.

405.334 Criteria for determining that a beneficiary has knowledge that services were excluded from coverage as custodial care or as not reasonable and necessary.

405.336 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

* * * * *

Authority: Secs. 1102, 1815, 1833, 1842, 1861, 1862, 1866, 1870, 1871 and 1879 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395l, 1395u, 1395x, 1395y, 1395cc, 1395gg, 1395hh, and 1395pp) and 31 U.S.C. 3711.

§ 405.301 [Amended]

2. Section 405.301 is amended by revising the citation "405.332" to read "405.336".

§ 405.330 [Amended]

3. In § 405.330, paragraph (b)(1) is amended by revising the citation "§ 405.332(a)" to read "§ 405.334(a)" and paragraph (b)(2) is amended by revising the citation "§ 405.332(b)" to read "§ 405.336(b)".

§ 405.331 [Redesignated as § 405.332]

4. Section 405.331 is redesignated as § 405.332.

5. Section 405.332 is redesignated as 405.334 and revised to read as follows:

§ 405.334 Criteria for determining that a beneficiary has knowledge that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A beneficiary who receives noncovered services that constitute custodial care under § 405.310(g), or that are not reasonable and necessary under § 405.310(k), will be found to have known that these services were not covered if the criteria in paragraphs (b) and (c) of this section are met.

(b) *Written notice.* Written notice has been given to the beneficiary, or to someone acting on his or her behalf, that the services were not covered because they did not meet Medicare coverage guidelines. A notice concerning similar or reasonably comparable services furnished on a previous occasion also meets this criterion. For example, program payment may not be made for the treatment of obesity, no matter what form the treatment may take. After the beneficiary who is treated for obesity with dietary control is informed in writing that Medicare will not pay for treatment of obesity, he or she will be presumed to know that there will be no Medicare payment for any form of subsequent treatment of this condition, including use of a combination of exercise, machine treatment, diet, and medication.

(c) *Source of notice.* The notice was given by one of the following:

(1) The PRO, intermediary, or carrier.

(2) The group or committee responsible for utilization review for the provider that furnished the services.

(3) The provider, practitioner, or supplier that furnished the service.

6. A new § 405.336 is added to read as follows:

§ 405.336 Criteria for determining that a provider, practitioner, or supplier knew that services were excluded from coverage as custodial care or as not reasonable and necessary.

(a) *Basic rule.* A provider, practitioner, or supplier that furnished services that constitute custodial care under § 405.310(g), or that are not reasonable and necessary under § 405.310(k), will, under any one of the circumstances described in paragraphs (b) through (f) of this section, be found to have known that these services were not covered.

(b) *Notice from the PRO, intermediary or carrier.* The PRO, intermediary, or carrier had informed the provider, practitioner, or supplier that the services furnished were not covered, or that similar or reasonably comparable services were not covered.

(c) *Notice from the utilization review committee or the beneficiary's attending physician.* The utilization review group or committee for the provider or the beneficiary's attending physician had informed the provider that these services were not covered.

(d) *Notice from a provider to the beneficiary.* The provider had informed the beneficiary that he or she no longer required covered services or that, before services were furnished, the services were not covered.

(e) *Knowledge based on experience, actual notice, or constructive notice.* It is clear that the provider, practitioner, or supplier could have been expected to have known that the services were excluded from coverage on the basis of—

(1) Its receipt of HCFA notices, including manual issuances, bulletins or other written guides or directives from intermediaries, carriers or PROs, including notification of PRO screening criteria specific to the condition of the beneficiary for whom the furnished services are at issue and of medicial procedures subject to preadmission review by the PRO; or

(2) Its knowledge of what are considered acceptable standards of practice by the local medical community.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance; No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: February 5, 1986.

Henry R. Desmarais,

Acting Administrator, Health Care Financing Administration

Approved: February 18, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-3847 Filed 2-19-86; 9:34 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-174; RM-4876]

TV Broadcast Station in St. George, UT

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: Action taken herein, at the request of Steven D. King, assigns VHF Television Channel 12 to St. George, Utah, as that community's first commerical television service.

EFFECTIVE DATE: March 25, 1986.

ADDRESS: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments TV Broadcast Stations (St. George, Utah); MM Docket No. 85-174, RM-4876.

Adopted: January 24, 1986.

Released: February 14, 1986.

By the Chief, Policy and Rules Division:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 50 FR 26010, published June 24, 1985, to assign VHF Television Channel 12 to St. George, Utah, as that community's first commercial television service. The *Notice* was issued in response to a petition filed by Steven D. King ("petitioner"). Petitioner filed supporting comments reiterating his interest in the channel.

2. St. George (population 11,350),[1] seat of Washington County (population 26,065) is located in southwestern Utah, approximately 170 kilometers (110 miles) northeast of Las Vegas, Nevada.

3. We believe the public interest would be served by the assignment of Channel 12 to St. George, Utah, in order to provide that community with its first commercial television service. The assignment can be made in compliance with the minimum distance separation requirements of §§73.610 and 73.698 of the Commission's Rules.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective March 25, 1986, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended for the following community:

City	Channel No.
St. George, UT	12, *18-

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-3716 Filed 2-20-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1132 and 1139

[Ex Parte No. MC-82 (Sub-1)]

Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is amending 49 CFR 1139.20 to permit motor common carriers of passengers to file schedules proposing general increases in fares to be effective at least 30 days after the date of filing rather than 45 days as presently required. In addition, the Commission is amending 49 CFR 1132.1

[1] Population figures are taken from the 1980 U.S. Census.

to change the protest and reply filing times for these proceedings to 8 days before the effective date of the proposal and 2 working days before the effective date, respectively.

The present 45-day notice provision constitutes a regulatory burden for individual carriers and the industry, and is inconsistent with the Bus Act reforms. To summarize, the concerns that gave rise to the 45-day requirement—limited entry and ratemaking primarily through collective action—no longer exist.

Reduction of the notice period will reduce regulatory lag in the review of proposed general increases of the intercity bus industry. It will increase the ability of bus carriers to respond to new market demands, and adjust rates to meet sudden or unanticipated cost increases. This action also is consistent with our continuing efforts to reduce unnecessary and burdensome rate regulation. Since the bus industry has become more competitive as a result of the Bus Act, a carrier's ability to respond to new market demands, free of regulatory interference, has increased in importance.

EFFECTIVE DATE: These rules will be effective March 24, 1986.

FOR FURTHER INFORMATION CONTACT:
Leonard L. Arnaiz, (202) 275–7831

or

Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Proposed rules in this proceeding were published at 49 FR 21553, May 22, 1984.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Energy and Environmental Analysis

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

We affirm our prior determination that adoption of the regulations in this decision will not have a significant economic impact on a substantial number of small entities. The rule changes will reduce regulatory lag, without affecting the ability of small entities to challenge proposed fare changes.

List of Subjects in 49 CFR 1132 and 1139

Motor carriers.

Adoption of Rules

We adopt the amendments to Title 49, Parts 1132 and 1139, of the Code of Federal Regulations described in the Appendix.

Decided: February 11, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

Appendix

Parts 1132 and 1139 of Title 49 of the Code of Federal Regulations are amended as follows:

PART 1132—[AMENDED]

1. The authority citations following § 1132.1 and § 1132.2 are removed, and an authority citation for part 1132 is added to read as follows:

Authority: 49 U.S.C. 10321, 10707, 10708, and 10726; 5 U.S.C. 553 and 559.

2. Section 1132.1 is amended by revising paragraphs (b) and (f), and by adding a new paragraph (j), to read as follows:

§ 1132.1 Protests against tariffs

* * * * *

(b) *When filed.* Protests against, and requests for suspension of, tariffs, or schedules filed under the Act will not be considered unless made in writing and filed with the Commission at Washington, DC. Protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraphs (c), (g), and (j) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30 days' notice in which even the protests (except as provided in paragraph (g) of this section) must reach the Commission not less than 5 days before the effective dates. Protests or petitions for investigation and suspension of tariffs filed on less than 10 days' notice will be accepted, *provided* that they reach the Suspension Board not later than 9:00 a.m. on the last workday before the tariffs' scheduled effective date. Appeals from decisions by the Suspension Board not to suspend or not to investigate matters in which the protests reached the Board later than 9 a.m. on the second working day before the protested tariffs' scheduled effective date will not be accepted. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraphs (a) and (g) of this section and copies are immediately telegraphed by protestants to the proponent carriers or their publishing agents. However, protests against and requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, must reach the Commission no later than 27 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.

* * * * *

(f) *Reply to protest.* A reply to a protest filed under this section must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided. Replies to protests against motor carrier rate bureau proposals other than proposals affecting tariffs for the transportation of household goods as defined in 49 CFR 1056.1(a) subject to Ex Parte No. MC–82 procedures to be assured of consideration, must reach the Commission no later than 14 days before the scheduled effective date of the protested schedules. Replies to protests against tariffs applicable on household goods (as defined in 49 CFR 1056.1(a)), published for the account of household goods carriers (as defined in 49 CFR 1040.2(b)) on not less than 45 days' notice shall be filed with the Commission not more than 5 days after the protest is filed. Replies to protests against motor common carrier of passengers general increase proposals subject to Ex Parte No. MC–82 procedures filed on not less than 30 days' notice must reach the Commission not later than the second working day prior to the effective date of the protested schedules.

* * * * *

(j) *Motor carriers of passengers filings.* When motor common carriers of passengers file schedules of proposed general increases in rates and charges subject to the special procedures adopted in Ex Parte No. MC–82 (Sub-No. 1), *Procedures in Motor Carrier Revenue Proceedings—Intercity Bus Industry*, 357 I.C.C. 35 (1977) and set forth at 49 CFR Part 1139, protests thereto must reach the Commission at least 8 days before the proposed effective date of the protested matter.

PART 1139—[AMENDED]

3. The authority citation for Part 1139 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10708; 5 U.S.C. 553 and 559.

4. Section 1139.20 is amended by revising paragraph (a) to read as follows:

§ 1139.20 Application

(a) Upon the filing by the National Bus Traffic Association, Inc., (NBTA) on behalf of its carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain proposed general increases in fares or charges where such proposal would result in an increase of $1 million or more in the annual operating revenues on the traffic affected by the proposal, the motor common carriers of passengers on whose behalf such schedules are filed shall, concurrently with the filing of those schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 30 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1139.21 through 1139.23 represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the current situation.

* * * * *

[FR Doc. 86-3748 Filed 2-20-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 51, No. 35
Friday, February 21, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Nectarine Reg. 14, Amdt. 8; Peach Reg. 14, Amdt. 8]

Nectarines, Pears, Plums, and Peaches Grown in California; Proposed Amendment of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend size requirements for shipments of fresh nectarines and peaches grown in California. These proposed requirements are designed to promote the marketing of suitable quality and sizes of such fresh fruit in the interest of producers and consumers during the 1986 season.

DATE: Comments due March 24, 1986.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Room 2069–S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Acting Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, Washington, DC 20250. Telephone 202–447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This proposed rule is issued under the marketing agreements, as amended, and Marketing Orders 916 and 917, as amended (7 CFR Parts 916 and 917), regulating the handling of nectarines, pears, plums and peaches grown in California. The agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). Shipments of these California fruits are regulated by grade and size under Nectarine Regulation 14 (7 CFR Part 916) and Peach Regulation 14 (7 CFR Part 917). Because these regulations do not change substantially from season to season, they are issued on s continuing basis subject to amendment, modification or suspension as may be recommended by the applicable committees and approved by the Secretary.

The Nectarine Administrative Committee and the Peach Commodity Committee recommended amendment of the size requirements for nectarines and peaches for the 1986 season, which is expected to begin in April. This proposed rule is based upon those recommendations, information submitted by the committees, and other available information. The proposed changes reflect crop and market conditions experienced last season and expected in 1986. The changes are designed to provide ample supplies of good quality fruit in the interest of producers and consumers pursuant to the declared policy of the act.

This proposal would change the size requirements for nectarines and peaches by adding several new varieties now produced in commercially significant quantities, and by deleting from size regulation certain varieties no longer produced in significant quantities. The proposed rule also would change the weight count standards (i.e. the maximum number of fruit permitted in a 16-pound sample) for certain varieties and sizes of peaches and nectarines packed in volume-fill containers. Additionally, weight count standards are proposed for nectarines packed in tray packs (molded forms).

With respect to nectarines, §§ 916.356 (a)(2), (a)(3), and (a)(4) would be amended to add new varieties to the minimum size requirements. Specifically, the May Glo variety would be added to § 916.356(a)(2), the Ama Lyn, Mike Grand, Star Brite, and Tina Red varieties would be added to §916.356(a)(3), and the Super Star variety would be added to § 916.356(a)(4). Finally, the Ambrosia and Desert Dawn nectarine varieties would be deleted from minimum size requirements.

For peaches, §§ 917.459 (a)(4) and (a)(5) would be amended to add new varieties to the minimum size requirements. Specifically, the Ray Crest variety would be added to § 917.459(a)(4). The Autumn Crest, Berenda Sun, and Ryan's Sun varieties would be added to § 917.459(a)(5). In addition, size requirements would be deleted for the Early Royal May, Early Fairtime, Fiesta, and July Elberta peach varieties. The July Elberta is also known as Early Elberta, Kim Elberta, and Socala.

Shipments of the above-named nectarine and peach varieties that would be regulated exceeded 10,000 packages during the prior season, and shipments of the above-name varieties that would be eliminated from variety-specific size regulation fell below 5,000 packages during the prior season. The industry practice is to implement variety-specific size regulations for varieties of nectarines and peaches which are produced in commercially significant quantities. When varieties are no longer produced in significant quantities they are deleted from variety-specific size regulations.

Also, under the proposal all types of containers of nectarines would be checked on the basis of weight count standards (§§ 916.356 (a)(2)(ii), (a)(3)(ii), and (a)(4)(ii)). Currently, the weight count standards apply to all containers other than tray packs. This proposal would extend these standards to nectarine tray packs to lessen the chances of fruit size variability.

Further, minor adjustments are proposed in the weight count standards for nectarines to improve maturity. The maximum number of nectarines in a 16-pound sample for the 108 size would be reduced from 98 to 95, and the maximum number of nectarines in a 16-pound sample for the 96 size would be reduced from 90 to 87. Since the sample size of 16-pounds is relatively large, the overall effect on fruit size would be minimal and should not have the effect of reducing supplies of a particular size or variety of nectarines. In fact, the proposed changes may have the reverse effect if growers leave the fruit on the tree for longer periods to gain size and

maturity, which would be desirable to consumers.

In a similar weight count action, the proposal also would increase the maximum number of size 80 peaches which would be permitted in a 16-pound sample from 71 to 73 pieces of fruit when they are packed in loose-filled containers (§ 917.459(a)(4)(iii)). Slightly larger fruit has been packed in loose-filled containers than in tray packs. Therefore, the result of this relaxation should be more uniformly sized peaches, regardless of type of pack.

List of Subjects

7 CFR Part 916

Marketing agreements and orders, Nectarines, California.

7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: Secs. 1–9, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

The proposal is as follows:

PART 916—NECTARINES GROWN IN CALIFORNIA

2. The text of paragraphs (a)(2), (a)(3), and (a)(4) of § 916.356 (50 FR 27813) would be revised to read:

§ 916.356 Nectarine Regulation 14.

(a) * * *

(2) Any package or container of Aurelio Grand, Mayfair, Maybelle, May Glo, or Royal Delight variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 95 nectarines.

(3) Any package or container of Ama Lyn, Apache, Armking, Early May, Early May Grand, Mike Grand, Early Star, Gee Red, June Belle, June Glo, June Grand, May Grand, Red June, Spring Grand, Star Brite, Sunfre, Tina Red, or Zee Gold variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 87 nectarines.

(4) Any package or container of Autumn Delight, Autumn Grand, Bob Grand, Clinton-Strawberry, Early Sun Grand, Fairlane, Fantasia, Firebrite, Flamekist, Flavortop, Flavortop I, Gold King, Granderli, Hi-Red, Independence, Kent Grand, Late Le Grand, Le Grand, Moon Grand, Niagara Grand, P–R Red, Red Diamond, Red Free, Red Grand, Regal Grand, Richards Grand, Royal Giant, Ruby Grand, September Grand, Tasty Free, Tom Grand, Larry's Grand, Son Red, Spring Red, Late Tina Red, Red Jim, Summer Beaut, Sparkling Red, Star Grand, Summer Grand, Sun Grand, Sherri Red, Super Star or 20 G 836 variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray pack) in a No. 22D standard lug box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 84 nectarines in the lug box; and

(ii) Such nectarines, when packed in any container, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 75 nectarines.

* * * * *

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

3. The text of paragraphs (a)(4) introductory text, (a)(4)(iii), and (a)(5) introductory text of § 917.459 (50 FR 27813) would be revised to read:

§ 917.459 Peach Regulation 14.

(a) * * *

(4) Any package or container of Babcock, Coronet, Early Coronet, Firecrest, First Lady, Flavorcrest, Flavor Red, Golden Lady, Honey Red, JJK–1, June Crest, June Lady, May Crest, May Lady, Merrill Gem, Merrill Gemfree, Ray Crest, Redhaven, Redtop, Regina, Royal May, Springcrest, Spring Lady, Willie Red, or 50–178 variety of peaches unless: * * *

(iii) Such peaches in any container when packed other than as specified in paragraph (a)(4) (i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches.

(5) Any package or container of Angelus, August Sun, Autumn Crest, Autumn Gem, Autumn Lady, Belmont, Berenda Sun, Blum's Beauty, Cassie, Cal Red, Carnival, Early O'Henry, Elberta, Elegant Lady, Fairtime, Fay Elberta, Fayette, Fire Red, Flamecrest, Fortyniner, Franciscan, Halloween, July Lady, July Sun, Kings Lady, Lacey, Mardigras, O'Henry, Pacifica, Parade, Preuss Suncrest, Red Cal, Redglobe, Red Lady, Rio Oso Gem, Royal Flame, Ryan's Sun, Scarlet Lady, Sparkle, Summerset, Suncrest, Sun Lady, Toreador, or Windsor variety of peaches unless:

* * * * *

Dated: February 13, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–3758 Filed 2–20–86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099

[Docket Nos. AO–366–A25–R01 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR parts	Marketing area	Docket Nos.
1007	Georgia	AO–366–A25–R01
1006	Upper Florida	AO–356–A23–R01
1011	Tennessee Valley	AO–251–A28–R01
1012	Tampa Bay	AO–347–A26–R01
1013	Southeastern Florida	AO–286–A33–R01
1046	Louisville-Lexington-Evansville	AO–123–A54–R01
1093	Alabama-West Florida	AO–386–A4–R01
1094	New Orleans-Mississippi	AO–103–A46–R01
1096	Greater Louisiana	AO–257–A33–R01
1097	Memphis, Tennessee	AO–219–A41–R01
1098	Nashville, Tennessee	AO–184–A48–R01
1099	Paducah, Kentucky	AO–183–A40–R01

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of rulemaking proceeding.

SUMMARY: This action terminates the current rulemaking proceeding on proposals to increase Class I milk prices under 12 southeastern Federal milk marketing orders.

At the request of Dairymen, Inc., a public hearing was held at Atlanta, Georgia, on June 25–28, 1985, to consider the cooperative's proposals to increase Class I price differentials. The hearing was reopened at the same location on October 2–3, 1985, to obtain testimony missing from the transcript of the prior hearing and to receive additonal evidence concerning economic and marketing conditions that had developed subsequent to the initial hearing. Proponent cooperative has now requested that this proceeding be terminated in view of recent legislation, The Food Security Act of 1985 (Pub. L. 99–198), providing for a higher level of Class I differentials for the 12 markets than the Class I differentials proposed at the Atlanta hearing.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 24, 1985; published May 30, 1985 (50 FR 23021).

Extensions of Time for Filing Briefs: Issued July 18, 1985; Issued August 1, 1985.

Proposed Termination of Proceeding: Issued August 16, 1985; published August 21, 1985 (50 FR 33761).

Notice of Reopened Hearing and Termination of Proposed Termination of Proceeding; Issued September 25, 1985; published September 27, 1985 (50 FR 39133).

Statement of Consideration

This action terminates the proceeding on proposals that would have increased the Class I price differentials under 11 of the 12 orders listed above, increased the plant location adjustment rates under all 12 orders, and modified a pooling provision of the Louisville-Lexington-Evansville Federal order.

The public hearing on the proposals was held in Atlanta, Georgia, on June 25–28, 1985. The Department received on August 2, 1985, (28 days after the date when the transcript was due) the reporting contractor's transcript of the last day of the hearing. Due to mechanical problems encountered by the court reporter, the third and fourth days' transcript of the hearing did not contain a verbatim account of the testimony given on those days. In view of the testimony missing from the transcript and increased milk production that occurred during June and July 1985 relative to demand, interested parties were asked on August 16, 1985, to comment on a proposed termination of the proceeding that was initiated for the purpose of increasing prices to assure adequate milk supplies for the region.

Proponent cooperative opposed terminating the proceeding and requested that the hearing be reopened. A notice of reopened hearing and termination of the proposed termination of proceeding was issued on September 25, 1985. The reopened hearing was held at Atlanta, Georgia, on October 2–3, 1985, to obtain testimony missing from the transcript of the prior hearing session and to receive additional evidence concerning economic and marketing conditions that had developed subsequent to the initial session of the hearing.

Proponent cooperative has now requested that the current rulemaking proceeding be terminated in view of recent legislation, The Food Security Act of 1985 (Pub. L. 99–198), providing for a much higher level of Class I differentials for the 12 markets than the Class I differentials proposed at the Atlanta hearing.

The cooperative's request that the current rulemaking proceeding in this matter be terminated should be granted. As noted by proponent, consideration of changes in the location adjustment provisions for the southeastern Federal milk orders can best be accomplished in new rulemaking proceedings that are not encumbered by the two sessions of the Atlanta hearing.

Termination Order

In view of the foregoing, it is hereby determined that the aforesaid proceeding with respect to proposed amendments to the tentative marketing agreements and to the orders should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098, and 1099 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

Signed at Washington, DC, on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3754 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

[Docket Nos. A0–361–A24 etc.]

Milk in the Chicago Regional and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Part	Marketing area	A0 Nos.
1030	Chicago Regional	A0–361–A24
1032	Southern Illinois	A0–313–A35
1033	Ohio Valley	A0–160–A55
1036	Eastern Ohio-Western Pennsylvania.	A0–179–A49–R01
1049	Indiana	A0–319–A35
1050	Central Illinois	A0–355–A24

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals to amend the Chicago Regional, Southern Illinois, Ohio Valley, Eastern Ohio-Western Pennsylvania, Indiana, and Central Illinois milk orders. The principal proposals would change the location adjustment provisions of the above listed orders to conform with the higher Class I differentials mandated by the Food Security Act of 1985. Proponents contend that such changes are necessary in order to maintain historical inter-market price alignment. In order to provide that proposals for adjacent markets be presented together, the hearing is being held on a regional basis, as requested by several of the proponents.

Because the Food Security Act of 1985 mandates that the higher Class I differentials be effective May 1, 1986, proponents have asked that the issues presented at the hearing be dealt with on an expedited basis.

DATE: The hearing will convene at 9:30 a.m., on March 12, 1986.

ADDRESS: The hearing will be held at the Holiday Inn Airport, 2501 South High School Road, Indianapolis, Indiana 46241 (317) 244–6861.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public

hearing to be held at the Holiday Inn Airport, 2501 South High School Road, Indianapolis, Indiana 46241, beginning at 9:30 a.m., on March 12, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

This hearing represents a reopening of the public hearing previously held with respect to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania (Docket No. A0-179-A49) marketing area for the limited purpose of receiving evidence regarding the mandated higher Class I differential as it may relate to the proposal to change the location adjustment provision of the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Proposals that would revise the present pricing zones of the several marketing areas do not open for consideration at the hearing any changes in the presently defined territory included in such marketing areas.

Actions under the Federal milk order program are subject to the "Regulatory Flexibility Act" (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purposes of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1030, 1032, 1033, 1036, 1049, and 1050

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1030, 1032, 1033, 1036, 1049, and 1050 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Central Milk Producers Cooperative:

Proposal No. 1:

In § 1030.52, add two new paragraphs (a)(1) and (a)(2) to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(a) * * *

(1) For any plant located in Lake County, Indiana the applicable adjustment rate per hundredweight shall be plus 20 cents.

(2) For any plant physically located in a regulated marketing area having a Class I differential greater than $1.40 which becomes regulated under Order 30, in any mouth, adopt such schedule of location adjustments as may be necessary to preserve competitive equity between such Order 30 regulated handlers and handlers regulated under the higher Class I differential order.

* * * * *

Proposed by Dean Foods Company:

Proposal No. 2:

In § 1030.52, add a new paragraph (a)(1) to read as follows:

§ 1030.52 Plant location adjustments for handlers.

* * * * *

(a) * * *

(1) For any plant located in the counties of Lake, Porter, La Porte, and Starke in the State of Indiana, the applicable adjustment rate per hundredweight shall be a plus 30 cents.

Proposed by Associated Milk Producers, Inc.:

Proposal No. 3:

In § 1032.2, revise the "Base zone" and the "Northern zone" to read as follows:

§ 1032.2 Southern Illinois marketing area.

* * * * *

Base Zone

Clinton, Madison (Alton Township only), and Washington.

Northern Zone

Bond, Calhoun, Champaign, Christian, Clark, Clay, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Greene, Jasper, Jefferson, Jersey, Lawrence, Logan, Macon, Macoupin, Marion, McLean, Menard, Montgomery, Morgan, Moultrie, Piatt, Richland, Sangamon, Shelby, Vermillion, Wabash, and Wayne.

* * * * *

Proposal No. 4:

In § 1032.52, *Plant location adjustments for handlers,* revise the table in paragraph (a)(1) from "Southern Zone . . . Plus 7 cents" to "Southern Zone . . . Plus 22 cents", revise paragraph (a)(3) by changing "15 cents" and "1.5 cents" to "20 cents" and "2.0 cents" respectively, and revise paragraph (a)(2)(i) and add a new paragraph (d) to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(2) * * *

(i) *Plus 7 cents.* St. Clair County (Scott Military Reservation, East St. Louis, Centerville, Canteen, and Stites Townships and the City of Belleville only) in the State of Illinois and the State of Missouri.

* * * * *

(d) Diverted milk shall be priced at the location of the plant to which diverted, except that, in the case of a distributing plant, if during the month not more than 4 days' production of a producer is diverted from such plant, such milk shall be priced at the location of the plant from which diverted.

Proposed by Beatrice Dairy Products:

Proposal No. 5:

In § 1032.52, *Plant location adjustments for handlers,* revise the table in paragraph (a)(1) from "Northern Zone . . . Minus 7 cents" to "Northern Zone . . . Minus 21 cents".

Proposed by Land O'Lakes, Mid-America Dairymen, Inc., Midwest Dairymen's Co., Prairie Farms Dairy, Inc. and Wisconsin Dairies:

Proposal No. 6:

Revise § 1032.52 to read as follows:

§ 1032.52 Plant location adjustments for handlers.

For producer milk received at a pool plant which is classified as Class I milk, the price specified in § 1032.50(a) shall be adjusted for the location of such plant by the following amount:

(1) At a plant in the Southern Zone except Randolph Co., Illinois, and the Missouri county of Cape Girardeau, plus 22 cents.

(2) At a plant in the Northern Zone, minus 12 cents.

(3) At a plant in the Missouri county of St. Louis, the city of St. Louis, and the territory within Scott Military Reservation, East St. Louis, Centerville, Canteen, and Stites Townships, and the

city of Belleville, all in St. Clair County, Illinois, and Randolph County, Illinois, plus 7 cents.

(4) At a plant in the Illinois counties of Calhoun, Greene, Jersey, Macoupin, Montgomery, Christian, Shelby, Coles, Cumberland, Clark, Fayette, Effingham, Jasper, Crawford, Marion, Clay, Richland, Lawrence, Jefferson, Wayne, Edwards, Wabash, minus 2 cents.

(5) At a plant outside the marketing area, minus 20 cents if such plant is 100 or more miles from the city or village limits of Alton, Robinson, or Vandalia, Illinois, whichever is nearest, and minus an additional 2.0 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles: Provided, That the adjustment at a plant outside the marketing area and in the Indiana counties of Fountain, Parke, Vermillion, and Warren shall be the same as for a pool plant located in the northern zone; and

(6) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator. The market administrator shall use the latest edition of the *Household Carriers' Guide* in determining such mileages.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 110 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to receipts of fluid milk products from pool plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply; and

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

Proposed by Arps Dairy, Inc.:

Proposal No. 7:

In § 1033.53, *Plan location adjustments for handlers,* revise the table in (a)(1) from "Northwestern zone . . . Minus 5 cents" to "Northwestern zone . . . Minus 25 cents".

Proposed by Milk Marketing, Inc.:

Proposal No. 8:

Revise § 1033.6 to read as follows:

§ 1033.6 Ohio Valley marketing area.

* * * * *

(a) "Zone 1" shall include the following territory:

Ohio Counties

Fulton, Hancock, Henry Lucas, Putnam, Sandusky (Woodville and Madison Townships only), Seneca, Wood.

Michigan Counties

Lenawee (Blissfield, Deerfield, Ogden, Palmyra, and Riga Townships only).

Monroe (except Ash, Berlin, Dundee, Exeter, London, and Milan Townships).

(b) "Zone 2" shall include the following territory:

Ohio Counties

Allen, Auglaize, Crawford, Darke, Hardin, Logan, Marion, Mercer, Morrow, Richland, Shelby, Union, Van Wert (city of Delphos only) Wyandot.

(c) "Zone 3" shall include the following territory:

Ohio Counties

Butler, Champaign, Clark, Clinton, Coshocton (except Adams Township), Delaware, Fairfield, Fayette, Franklin, Greene, Guernsey (except Oxford, Londonberry, and Millwood Townships), Hocking, Knox, Licking, Madison, Miami, Montgomery, Morgan, Muskingum, Noble, Perry, Pickaway, Preble, Warren.

(d) "Zone 4" shall include the following territory:

Ohio Counties

Adams, Athens, Brown, Clermont, Gallia, Hamilton, Highland, Jackson, Lawrence, Meigs, Pike, Ross, Scioto, Vinton, Washington.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Grant, Greenup, Harrison, Kenton, Lewis, Mason, Pendleton, Robertson.

Indiana Counties

Dearborn, Ohio.

West Virginia Counties

Calhoun, Gilmer, Pleasants, Ritchie, Wirt, Wood.

(e) "Zone 5" shall include the following territory:

Kentucky Counties

Floyd, Johnson, Lawrence, Magoffin, Martin, Pike.

West Virginia Counties

Boone, Cabell, Jackson, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Roane, Wayne.

(f) "Zone 6" shall include the following territory:

West Virginia Counties

Fayette, Raleigh, Wyoming.

Proposal No. 9:

In § 1033.53, revise paragraphs (a), (a)(1), (a)(2), (a)(3), redesignate (a)(4), as (a)(5), and add a new paragraph (a)(4) to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) For milk received at a plant from producers that is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies the price specified in § 1033.51(a) shall be adjusted on the basis of where the plant receiving the milk is located, as follows: Provided, That the resulting adjusted price for fluid milk at a pool plant located in the Indiana or Eastern Ohio-Western Pennsylvania marketing area under Parts 1049 and 1036, respectively, of this chapter shall not be less than the Class I price under such other Federal orders applicable at the location of the pool plant:

(1) At a plant located in one of the zones set forth in § 1033.6, the adjustment shall be as follows: Except, That no minus location adjustment shall apply on the milk of any producers located in the State of Ohio and the Michigan counties of Hillsdale, Lenawee, Monroe, Jackson, and Washtenow, if such milk is diverted from a plant located within the marketing area:

Zone	Adjustment per hundredweight
1	Minus 24 cents.
2	Minus 14 cents.
3	No adjustment.
4	Plus 7 cents.
5	Plus 15 cents.
6	Plus 21 cents.

(2) At a point located outside the marketing area and 60 miles or less from the city hall of the nearest city listed herein, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at Cincinnati, Coshocton, Dayton, Lima, Marietta, or Toledo, Ohio; Ashland or Maysville, Kentucky; or Beckley or Charleston, West Virginia; whichever city is nearest;

(3) At a plant located outside the marketing area and more than 60 miles from the city hall of the nearest city listed in paragraph (a)(2) of this section, excluding plants located in the area specified in (a)(4) of this section, the adjustment shall be the adjustment applicable at the nearest city, less 11 cents and less an additional 1.5 cents for each 10 miles or fraction thereof in excess of 70 miles that such plant is located from the city hall of the nearest city listed above. However, no minus

location adjustment shall apply at any plant located in the Louisville-Lexington-Evansville marketing area under Part 1046 of this chapter or east of the Mississippi River and south of the northern boundary of Kentucky, West Virginia, or Virginia;

(4) At a plant located in the Kentucky counties of Anderson, Clark, Fayette, Garrard, Jessamine, Madison, Mercer, or Woodford, the adjustment shall be plus 17 cents;

(5) For the purpose of computing location adjustments pursuant to this section, distances shall be measured by the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

Proposed by Southern Belle Dairy:
Proposal No. 10:

In § 1033.6, revise paragraph (b), redesignate paragraph (c) as paragraph (d), and add a new paragraph (c) to read as follows:

§ 1033.6 Ohio Valley marketing area.

* * * * *

(b) The "Central Zone" shall include the following territory:

Ohio Counties

Adams, Champaign, Clark, Clinton, Darke, Delaware, Fairfield, Fayette, Franklin, Gallia, Greene, Highland, Hocking, Jackson, Knox, Lawrence, Licking, Madison, Miami, Montgomery, Pickaway, Pike, Preble, Ross, Scioto, Shelby, Union, Vinton.

Kentucky Counties

Boyd, Greenup, Lewis.

(c) The "Southwestern Zone" shall include the following territory:

Ohio Counties

Brown, Butler, Clermont, Hamilton, Warren.

Kentucky Counties

Boone, Bracken, Campbell, Grant, Harrison, Kenton, Mason, Pendleton, Robertson.

Indiana Counties

Dearborn, Ohio.

* * * * *

Proposal No. 11:

In § 1033.53, redesignate (a)(1), (a)(2), and (a)(3) as (a)(2), (a)(3), and (a)(4) respectively, and add a new paragraph (a)(1) to read as follows:

§ 1033.53 Plant location adjustments for handlers.

(a) * * *

(1) At a plant in the Southwestern Zone, the Class I price shall be increased by 7 cents;

* * * * *

Proposed by Dean Foods Company:
Proposal No. 12:

Amend § 1049.52(a) by deleting paragraph (a)(2) and revising paragraphs (a) and (a)(1) to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1) of this section, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraph (a)(1) of this section, except that in no event shall the adjustment result in a price less than the Class III price for the month.

(1) Each plant location adjustment rate per hundredweight for this section and § 1049.75 shall be computed on the basis of the shortest hard-surfaced highway distances as determined by the market administrator. These location adjustments shall be based from a zero zone located zero to ten miles from the Monument Circle, Indianapolis, Indiana, and shall be a minus 2 cents for each ten miles or fraction thereof beyond the zero zone.

* * * * *

Proposed by Hoosier Milk Marketing Agency, Inc.:

Proposal No. 13:

In § 1049.52, revise paragraph (a)(1) to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) * * *

(1) At any plant located within:

Rate of adjustment per hundredweight (cents)	
(i) The State of Ohio or any Indiana county not specifically named in paragraph (a)(1) (ii) through (vii) of this section	0
(ii) Any of the Indiana counties of: Benton, White, Carroll, Cass, Fulton, Miami, Wabash, Huntington, Allen, Wells, Adams, Blackford and Jay	20
(iii) Any of the Indiana counties of: Koscuisko and Whitely	24
(iv) Any of the Indiana counties of: Newton, Jasper, Pulaski, Starke, Marshall La Porte, St. Joseph and Elkhart	29
(v) Any of the Indiana counties of: Lagrange, Steuben, Noble and De Kalb	32
(vi) Any of the Michigan counties of: Berrien, Cass, St. Joseph and Branch	36
(vii) Any of the Indiana counties of: Lake and Porter	40

* * * * *

Proposed by the Milk Foundation of Indiana:

Proposal No. 14:

In § 1049.52, revise paragraph (a) to read as follows:

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1) of this section, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraphs (a)(1) through (5) of this section; respectively, except that in no event shall the adjustment result in a price less than the Class III price for the month. For the purpose of this section and § 1049.75, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(1) At any plant located within the State of Ohio or south of the Ohio river or any Indiana county not named in paragraphs (a)(2) through (5) of this section: '0' cents adjustment.

(2) At any plant located within the Indiana counties of: Bartholomew, Boone, Brown, Clay, Clinton, Delaware, Grant, Fountain, Hancock, Hamilton, Howard, Henry, Hendricks, Johnson, Morgan, Marion, Madison, Monroe, Montgomery, Owen, Putnam, Parke, Shelby, Tipton, Tippecanoe, Randolph, Vermillion, Vigo, Wayne, Warren: 6 cent adjustment.

(3) At any plant located within the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, Lagrange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley: 14 cent adjustment.

(4) At any plant located within the Indiana counties of: Benton, Elkhart,

Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph and Berrien and Cass counties, Michigan: 21 cent adjustment.

(5) At any plant located within the Indiana counties of: Lake, La Porte, Porter, Starke: 28 cent adjustment.

(6) For any plant at a location outside the territory specified above, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Indiana, or the main post offices of Fort Wayne, South Bend, or Valparaiso, Indiana, and shall be 2.0 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to this section applicable at the respective point.

* * * * *

Proposed by Associated Milk Producers, Inc.:

Proposal No. 15:

In § 1050.52, revise paragraphs(a)(1) and (a)(2) to read as follows:

§ 1050.52 Plant location adjustments for handlers.

(a) * * *

* * * * *

(1) At a plant in Zone II of in the Illinois counties of Henry and Mercer, the Class I price shall be the same as Zone I; and

(2) At a plant located outside the State of Illinois, the Class I price shall be reduced 7.5 cents if such plant is 50 or more miles by the shortest highway distance, as determined by the market administrator from the City Hall in Peoria, Ill., plus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles.

* * * * *

Proposed by Prairie Farms Dairy, Inc.:

Proposal No. 16:

§ 1050.52, *Plant location adjustments for handlers,* revise paragraph (a)(2) by changing "7.5 cents" and "1.5 cents" to "10.0 cents" and '2.0 cents" respectively, and by revising paragraphs (a) and (b) to read as follows:

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk and other source milk for which a location adjustment is applicable at a plant that is outside Zone I shall be adjusted as follows:

* * * * *

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee plant only to the extent that 105 percent of Class I disposition at the transferee plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to § 1050.9(c), and the volume assigned as Class I to receipt from other order plants and unregulated supply plants, such assignment to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

* * * * *

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 17:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator of each of the 6 orders.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3757 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1036

[Docket No. A0-179-A49]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Partial Recommended Decision and Opportunity To File Written Exceptions on Proposed Admendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This partial decision recommends certain changes in the Eastern Ohio-Western Pennsylvania milk order based on industry proposals considered at a public hearing held August 7-8, 1985. The recommended changes would: (1) Reduce the pooling requirements for cooperative balancing plants; (2) Permit the Director of the Dairy Division to adjust the pooling standards for pool supply plants and cooperative balancing plants when temporary aberrations occur in the market's supply-demand conditions; (3) Provide handlers more flexibility in moving milk directly from producer farms to nonpool manufacturing plants. The proposed changes are needed to reflect current marketing conditions and to assure orderly marketing in the area.

DATE: Comments are due on or before March 13, 1986.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Administrator of the Agricultural Marketing Service has determined that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The amendments will promote orderly marketing of milk by producers and regulated handlers.

Prior documents in this proceeding:

Notice of Hearing: Issued July 19, 1985; published July 24, 1985 (50 FR 30204).

Suspension Order: Issued September 4, 1985; published September 10, 1985 (50 FR 36865).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250 by the 20th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Strongsville, Ohio, on August 7–8, 1985, pursuant to a notice of hearing issued July 19, 1985 (50 FR 30204).

The material issues on the record of hearing relate to:

1. Pool plant qualifications.
2. Diversions to nonpool plants.
3. Location adjustments.

This decision deals only with issues 1 and 2. The remaining issue 3 is reserved for a later decision.

Findings and Conclusion

1. *Pool plant qualifications. (a) Pooling standards for balancing plants.* Several modifications should be made in the pooling standards for any non-distributing plant operated by a cooperative association as a balancing plant for the regulated market.

First, the minimum monthly delivery requirement to pool distributing plants to qualify a balancing plant as a pool plant under the order should be reducted to 35 percent of a cooperative association's total receipts. The delivery requirement to pool distributing plants can be met either by direct delivery from member producer's farms or by transfer from such cooperative's plant(s).

Second, the delivery requirement can be met on the basis of the cooperative's deliveries to pool distribution plants during the current month or based on such delivers during the preceding 12-month period ending with the current month.

Third, credit would be given in meeting the delivery requirement to a cooperative's shipments to nonpool plants so long as such shipments are not made on an agreed-upon Class II or Class III basis.

Presently, the order provides that a cooperative can attain pool status for its balancing plant(s) if during the month the quantity of fluid milk products either shipped to pool distributing plants from the cooperative's plants or directly delivered to pool distributing plants from the farms of cooperative producer members is not less than 65 percent in any month of September through April, and not less than 50 percent in any other month of the cooperative association members' producer milk.

The principal cooperative in the market, Milk Marketing Inc. (MMI), proposed that the pooling standards for balancing plants operated by cooperatives be reduced from 65 percent in September through April and 50 percent in any other month to 35 percent for each month. As proposed, the delivery requirement could be met either on a monthly basis or on the basis of deliveries over the preceding 12 months. The cooperative also proposed that qualifying deliveries would include those that are made to nonpool plants when a Class II or III classification is not requested.

MMI currently operates two plants under the order which are qualified as pool supply plants. One plant, in Orrville, Ohio, manufactures dairy products and the other plant, in Greensburg, Pennsylvania, is a receiving station. The cooperative's spokesman stated that these plants balance most of the market's daily and seasonal milk supplies. Based on data presented at the hearing by the proponent cooperative, the amount of milk MMI delivered to pool distributing plants in 1983 expressed as a percent of its total supply of producer-member milk ranged from a high of 50.45 percent in January to a low of 32.64 percent in June. The same comparison for 1984 revealed that a high of 51.35 percent was delivered in November and a low of 33.16 percent was delivered in June.

Daily balancing is reflected in figures for the cooperative's Orrville plant. During November and December 1984, when bottling needs were greatest on certain weekdays, receipts at the plant were relatively low, and often no milk was received. However, on weekends and holidays the plant received milk in excess of 1 million pounds per day.

The spokesman pointed out that MMI's plants have been pooled as supply plants under the order, even though it is apparent that they operate as balancing plants, because the total delivery requirements of the order for cooperative balancing plants are unrealistic in terms of current supply-demand conditions. However, he added that the 40 percent shipping requirement for pool supply plants during each month of September through February in the past has caused MMI to make unnecessary and uneconomic shipments to distributing plants in order to pool all of its member milk. This, he said, is not only costly, but it also reduces milk quality. The spokesman emphasized that relaxing the pooling standards for balancing plants as proposal would enable the cooperative to pool all of its member milk regularly associated with the market on an efficient basis.

The National Farmers Organization (NFO), also proposed that the pooling standards for balancing plants operated by cooperatives be reduced. However, its proposal would reduce the standards from the present levels to 40 percent each month. Additionally, NFO proposed that the delivery requirement could be met either on the basis of deliveries for the current month or during the preceding 12-month period ending with the current month. The spokesman stated that since the intent and operation of NFO's proposal is very similar to what MMI proposed, NFO could accept the proposed lower 35-percent delivery requirement.

The present delivery requirements for pool balancing plants were established in 1972, reflecting approximately the Class I utilization percentage of the milk of MMI members at fluid plants and also the market's Class I utilization percentage. However, the 65-percent delivery requirement for each month of September through April and the 50-percent requirement for the remaining months have proved to be unattainable rates in qualifying the two balancing plants operated by MMI. In fact, not one plant operated by a cooperative since the balancing plant provisions were implemented has ever qualified pursuant to these requirements. Instead, MMI has qualified its two plants as pool supply plants.

The record establishes that marketing conditions have changed significantly since the present pooling standards for balancing plants were established in 1972. Data for the market indicates a significant change has occurred in the supply-demand relationship for milk associated with the market since that

time.[1] For example, during the 12-year period from 1972 to 1984, producer milk receipts increased from 3.32 billion pounds in 1972 to 3.67 billion pounds in 1984 (an 11 percent increase).

During this same period, producer milk classified as Class I milk declined from 2.15 billion pounds in 1972 to 2.02 billion pounds in 1984 (a 6 percent decrease). Consequently, the market's Class I utilization percentage of producer milk has decreased substantially since 1972 (from 65 percent in 1972 to 55 percent in 1984). These data clearly indicate significant changes in the market's supply-demand relationship for milk since the present delivery requirement for balancing plants was adopted in 1972.

Another changed marketing condition described on the record supporting a reduction in the delivery requirements for a balancing plant concerns the substantial change in the market's fluid milk processing operations. Not only has there been a substantial reduction in the number of pool distributing plants on the market but also the relatively few remaining operations have become large, specialized distributing plants that process fluid milk not more than five days per week. As a result, the day-to-day fluid milk requirements at such specialized plants fluctuate widely. An exhibit of proponent MMI clearly demonstrated the wide day-to-day fluctuations in fluid milk requirements of distributing plants. On the heavy bottling days of the week, such plants need significant quantities of milk for their fluid operations, while on weekends, the plants are closed and no milk is received. This pattern of fluctuating demand for milk at these specialized distributing plants requires larger quantities of reserve milk than when such plants were less specialized and operated six or seven days per week.

To accommodate the pooling of the increased volume of reserve milk supplies, it has been necessary to suspend various pooling provisions of the order during the 1983–1985 period. Such suspensions have involved pool supply plant shipping percentages, balancing plant delivery requirements, and diversion limits. The suspension of these several provisions enabled MMI to move its total milk supply associated with the market on an efficient basis and maintain pool status for its two balancing plants.

[1] Official notice is taken of the 1973–1984, annual summaries of "Federal Milk Order Statistics" published by the Dairy Division, Agricultural Marketing Service, USDA.

The record establishes that at other times in the absence of any suspension MMI had to make inefficient movements of milk to other pool plants solely for the purpose of pooling its two balancing plants and the milk of member producers who have regularly supplied the fluid needs of the market. When this occurred, it significantly increased milk transportation and hauling costs. Such inefficient marketing practices can be avoided by reducing the order's pooling requirements for balancing plants.

In view of the significance of the changed marketing conditions described above, lowering the minimum delivery requirement for balancing plants operated by a cooperative association will permit a cooperative to serve the fluid needs of the market in an efficient manner. It will likewise permit a cooperative to perform needed balancing functions for the market without causing inefficient deliveries of milk merely for the purpose of meeting the pooling requirements of the order. The proposed 35 percent delivery requirement will best accomplish these results under the market's current supply-demand conditions and in terms of the principal cooperative's market participation in performing the balancing function.

As noted previously, a cooperative should be able to meet the requirement for certain minimum deliveries to pool distributing plants not only on the basis of such deliveries during the current month but also on the basis of deliveries during the preceding 12-month period. The 12-month rolling average concept was proposed by both MMI and NFO. It is needed to offset the potentially disruptive impact of a significant short-term change in marketing conditions on a cooperative's ability to qualify its balancing plant(s) for pooling. Allowing a cooperative such flexibility will assist in maintaining orderly marketing conditions for the regulated area.

In meeting the delivery requirement, a cooperative should receive credit on shipments to nonpool plants that are not made on an agreed-upon Class II or Class III basis. Shipments to another market for Class I purpose would benefit producers in this market since such shipments would enhance total pool proceeds. Not to count such shipments in meeting the delivery requirements could discourage such shipments, when in fact, such shipments may be needed in other markets.

A producer supplying an Order 36 pool plant testified in opposition to the proposals on the basis that their effect would be to facilitate the pooling of additional milk on the market with the consequences of reducing producer returns. A reduction in the delivery requirements for member producer milk will not, in any substantive way, provide the opportunity to pool additional milk not already associated with the market.

Although the handler did not testify at the hearing, a proprietary handler, in its post-hearing brief, opposed the proposals to relax the pool balancing plant provisions. It was the handler's position that the record evidence does not support these proposals. However, the record evidence developed in this proceeding does not support he poistion of the handler. To the contrary, the record establishes, as described previously, that relaxing the pooling standards for a balancing plant operated by a cooperative is necessary for the maintenance of orderly marketing.

(b) Temporary revision of pooling standards. The order should be amended to provide that the Director of the Dairy Division may increase or decrease the supply plant shipping percentage and the delivery percentages for qualifying a balancing plant operated by a cooperative association when a determination is made that additional supplies are needed at distributing plants or to prevent uneconomic deliveries for pooling purposes. The adjustment should be limited to 10 percentage points.

Before making any revision, the Director should investigate the need for revision, either on the Director's own initiative or at the request of interested persons. If the investigation shows that a revision may be appropriate, the Director should issue a notice stating that a temporary revision of the shipping standards is being considered and inviting interested persons to comment on the proposed revision.

MMI proposed that the Director of the Dairy Division be given the authority to increase or decrease by up to 10 percentage points both the supply plant shipping percentages and the pooling standards for balancing plants operated by cooperatives if the Director finds that such revisions are necessary to obtain needed shipments or to prevent uneconomic shipments. The cooperative proposed further that before making such a finding, the Director shall investigate the need for revision either on the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice which states that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed revision. At

the hearing, MMI modified the proposal to apply the revision only to pool balancing plants.

NFO also proposed flexible performance requirement percentages for supply plants and cooperative balancing plants that could be adjusted monthly in multiples of five percentage points. The maximum adjustment in such requirements, as proposed, would be the lesser of the supply plant and balancing plant requirements or the average non-Class I utilization percentage for the previous 12 months. Further, NFO proposed that the Secretary may adjust the requirements for a period not to exceed 6 months with increases from previous adjustments being made prior to the month for which they are effective.

There was not opposition to the proposals at the hearing.

The record of the hearing suggests the possibility that an emergency situation affecting the market's supply-demand situation could develop for a short time which would warrant an immediate adjustment (up or down) for either type of plant. Under the current order provisions, a change in a pool plant's performance requirements can be made only through a time-consuming amendment proceeding or by suspension Although a suspension action can be accomplished relatively quickly, it is limited becaue of procedural requirements to relaxing rather than increasing performance requirements. Inclusion of a provision to adjust temporarily supply plant shipping percentages and the delivery requirement percentages that a cooperative must meet in qualifying a balancing plant will enhance the ability of the order to deal with short emergency situations on a timely basis.

The limited modification of the delivery requirements for both supply plants and cooperative balancing plants by the Director of the Dairy Division, as provided herein, would permit downward and upward changes to be made. Thus the shipping percentages could be adapted to temporary aberrations in supply and demand. Should some unforeseen circumstance temporarily alter the relationship of supplies to sales in such a way that a temporary increase in shipping percentages is necessary to associate adequate supplies of milk and fluid use outlets in the market, the Director would have the authority to temporarily modify the shipping standards upward. Similarly the Director may temporarily adjust the standards downward in order to prevent uneconomic shipments made solely for pooling purposes. The provisions provided herein for temporary changes in the shipping percentages will provide a desirable degree of flexibility to augment both the pooling provisions for supply plants and the revised performance requirements for cooperative balancing plants.

The maximum adjustment adopted herein, which is limited to 10 percentage points, is somewhat less than what was proposed by NFO. However, past experience in the market does not indicate that there would be occasions when a temporary aberration in the supply-demand situation of distributing plants would warrant adjusting the shipping percentages for supply plants and the revised performance requirements for balancing plants beyond 10 percentage points. Accordingly, limiting such adjustment to 10 percentage points is appropriate under the market's current marketing situation.

2. *Diversions to nonpool plants.* Rules concerning the diversion of producer milk from pool plants to nonpool plants should be modified as follows:

(a) The limit on the aggregate quantity of milk that may be diverted to nonpool plants by a handler during certain months should be 40 percent of a handler's producer milk, i.e., the quantity delivered to or diverted from pool plants.

(b) March and December should be eliminated as months during which the limit on diversions to nonpool plants applies.

Presently, the order limits the total amount of milk that a cooperative or other handlers may divert to nonpool plants to 40 percent during the months of September through March of the total quantity of producer milk physically received at a pool plant(s) during the month. Determining diversion limitations of the alternative basis of allowing the same number of days' production of an individual producer to be diverted that is actually delivered to a pool plant should be continued without any change.

Both MMI and NFO proposed that the limitation on the aggregate amount of producer milk that a cooperative association or other handlers may divert be expanded from an amount equivalent to 40 percent the quantities physically received at pool plants to an amount equivalent to 40 percent of the total producer milk supply of the handler. In addition, NFO proposed that the months during which a handler may divert producer milk without limit to nonpool plants be extended from April through August to include March and December. There was no opposition to the proposals at the hearing.

The main thrust of proponents' arguments in support of their proposals was that in light of the market's current supply-demand conditions, the diversion limits are too restrictive and cause handlers to make uneconomic shipments of milk solely for the purpose of pooling all of the milk that historically has been associated with the market. They stated that such shipments are only costly, but also reduce the quality of the milk because of the extra pumping and handling involved. Both spokesmen believe that adoption of the proposed changes to the diversion provisions will eliminate inefficient movements of reserve milk supplies while maintaining an adequate supply of milk for fluid purposes.

Limiting the total amount of milk that a handler may divert to a quantity equivalent to 40 percent of the producer milk physically received at a pool plant amounts to a limit of about 29 percent of a handler's total supply of producer milk. This actual diversion limit is too stringent in view of the market's Class I use of Producer milk. For instance, over the past 3 years Class I utilization during the months when diversion limits apply has rarely exceeded 60 percent. Furthermore, expectations are that future increases in milk production will exceed any increases in Class I use.

In computing a handler's diversion allowance, the base to which the diversion percentage applies should include the amount of producer milk delivered to pool plants plus the amount diverted from such plants. This change will increase the amount of milk a handler may divert to nonpool plants from about 29 to 40 percent of a handler's total receipts of producer milk. Such an increase should permit handlers adequate flexibility to operate more efficiently. They will be able to move all of the milk not needed at pool plants for fluid purposes directly from the farm to a manufacturing outlet rather than delivering the milk first to a pool plant and then transferring it to a nonpool manufacturing plant. Such efficient movement of milk promotes orderly marketing.

NFO proposed that the change in computing diversion allowances apply to cooperatives only. However, it is appropriate to relax the corresponding diversion limit for pool plant operators also, as proposed by MMI. Considering the market's supply-demand situation, proprietary handlers would likely need less-restrictive diversion limits as much as cooperative associations. Under the revisions adopted herein, both proprietary operators and cooperative associations will be subject to the same

limitation on diversions to nonpool plants.

As noted previously, NFO also proposed that diversion limitations not apply during the months of December and March. The spokesman stated that in March, Class I utilization usually declines substantially from that of the preceding month (February). Thus, it becomes difficult to maintain pool status for their members' milk. In December, the problem, as stated by the spokesman, stems from the erratic demand for milk at fluid plants on certain days within the month because of the holiday season.

Data contained in the record indicate that there is a seasonal buildup in producer receipts beginning in March. For example, producer receipts on a daily basis for the four-year period, 1982–85, increased an average of 3.1 percent in March over those for February. During this same period, Class I utilization in March increased only an average of 0.6 percent over February. Consequently, there are substantial quantities of reserve milk on the market in March that must be moved to manufacturing plants. In such circumstances, continuance of diversion limitations for March could adversely affect the orderly and efficient disposition of milk not needed at pool plants for fluid purposes. Accordingly, the months during which a handler may divert producer milk to nonpool manufacturing plants should be extended from the period April–August to include March. Likewise, because of the erratic daily demand pattern for milk at fluid plants during December due to the holiday season and school closings, December should be eliminated as a month in which diversion limitations apply.

In his post-hearing brief, the same proprietary handler who opposed any change in the performance standards for a cooperative balancing plant objected to any revision of the order's present diversion rules. No significant basis was provided in the handler's brief to warrant not revising the diversion provisions as described above.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Eastern Ohio-Western Pennsylvania order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1036

Dairy products, Milk, Milk marketing orders.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for Part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

2. Section 1036.7 is amended by revising paragraph (d) and adding a new paragraph (f) to read as follows:

§ 1036.7 Pool plant.

* * * * *

(d) A plant operated by a cooperative association if, during the month, 35 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s) when a Class II or Class III classification is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 35-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted health authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

* * * * *

(f) The percentage delivery requirement in paragraphs (b) and (d) of this section may be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if the Director finds that such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision on either the Director's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and invite data, views, or arguments in favor of or in opposition to the proposed revision.

3. Section 1036.13 is amended by revising paragraph (e), the introductory text of paragraph (f), and paragraphs (f)(1)(ii) and (f)(2)(ii) to read as follows:

§ 1036.13 Producer milk.

* * * * *

(e) During March through August and December, subject to the conditions of paragraph (g) of this section, the operator of a pool plant or a cooperative association may divert the milk of a producer without limit.

(f) During September through February excluding December and subject to the conditions of paragraph (g) of this section:

(1) * * *

(ii) The plant operator may divert an aggregate quantity of milk of producers not exceeding 40 percent of the producer milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator.

(2) * * *

(ii) The cooperative association may divert an aggregate quantity of milk not exceeding 40 percent of the producer milk that the cooperative association causes to be delivered to pool plants or diverted therefrom.

* * * * *

Signed at Washington, DC on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-3753 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 1126, 1064, 1097, 1102, 1106, 1108, and 1138

[Docket Nos. AO-231-A54 et al.]

Milk in the Texas and Certain Other Marketing Areas; Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing Area	Docket Nos.
1126	Texas	AO-231-A54
1064	Greater Kansas City	AO-23-A57
1097	Memphis, Tennessee	AO-219-A43
1102	Fort Smith, Arkansas	AO-237-A34-RO1
1106	Southwest Plains	AO-210-A45-RO1
1108	Central Arkansas	AO-243-A39
1138	Rio Grande Valley	AO-335-A32

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposals by cooperative associations and dairy processors to amend the above-listed Federal milk marketing orders. Proponents indicate that the proposals are designed to change the location adjustment provisions in the orders to conform with the Class I differentials mandated by the Food Security Act of 1985. Consideration will also be given to whether these provisions should be adopted on an expedited basis.

This hearing also represents a reopening of a hearing that was held on November 6, 1985, to consider a merger of the Southwest Plains and Fort Smith, Arkansas marketing areas and expansion of the Southwest Plains marketing area to include additional territory in southwest Missouri and northeast Arkansas.

DATE: The hearing will convene at 9:30 a.m., local time, on March 4, 1986.

ADDRESS: The hearing will be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214/399-1010).

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Holiday Inn, Dallas-Ft. Worth Airport South, 4440 West Airport Freeway, Irving, Texas 75061 (214/399-1010), beginning at 9:30 a.m., on March 4, 1986, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Texas and certain other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

The hearing, with respect to the Southwest Plains and Fort Smith, Arkansas orders, is a reopening of a hearing held November 6, 1985, to consider a merger of the two marketing areas and expansion of the Southwest Plains marketing area to include additional territory in southwest Missouri and northwest Arkansas. The hearing is reopened for the limited purpose of receiving evidence with respect to the economic and marketing conditions which relate to the location adjustment provisions of the proposed merged and expanded Southwest Plains marketing area.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Federal order program, a small business will be considered as one which is independently owned and operated and which is not dominant in its field of operation. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

List of Subjects in 7 CFR Parts 1126, 1064, 1097, 1102, 1106, 1108, and 1138

Milk marketing orders, Milk, Dairy products.

The authority citation for Parts 1126, 1064, 1097, 1102, 1106, 1108, and 1138 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 1—Memphis, Tennessee, Part 1097:

Amend § 1097.52 Plant location adjustment for Handlers to read as follows:

(a) For milk received at a fluid milk plant from producers or a handler described in § 1097.9(c) and which is classified as Class I milk without movement to another fluid milk plant, the price specified in § 1097.50(a) shall be adjusted by the amount stated in paragraphs (a)(1) through (4) of this section for the location of such plant.

(1) For a plant located in the State of Tennessee and more than 50 miles from

the City Hall in Memphis, Tennessee, minus 25 cents;

(2) For a plant located in the State of Mississippi and adjustment shall be as follows:

(i) For a plant located within the counties of Itawamba, Lafayette, Lee, Panola, Pontotoc, Prentiss, Tate, Tunica or Union plus 18 cents; and

(ii) For a plant located in any Mississippi county not specified in paragraph (a)(2)(i) of this section and more than 50 miles from the City Hall in Memphis, Tennessee, plus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(3) For a plant located in the State of Arkansas the adjustment shall be as follows:

(i) For a plant located within the counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Springs, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sabastian, Sevier, Van Buren, White, Woodruff or Yell no location adjustment shall apply;

(ii) For a plant located in that portion of the State of Arkansas lying to the north of the counties specified in paragraph (a)(3)(i) of this section minus 22 cents;

(iii) For a plant located in that portion of the State of Arkansas lying south of the counties specified in paragraph (a)(3)(i) of this section plus 31 cents.

(4) For a plant located outside the areas specified in paragraphs (a) (1), (2) and (3) of this section the adjustment shall be minus 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the City Hall in Memphis, Tennessee.

(b) For fluid milk products transferred between fluid milk plants and classified as Class I milk such location adjustments shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made in sequence beginning with the transferor plant with the highest Class I price.

Proposed by Malone and Hyde Dairy:

Proposal No. 2—Memphis, Tennessee, Part 1097:

In § 1097.52, plant location adjustments for handlers, revise the schedule prescribing location adjustments for plants located in the State of Tennessee to read as follows:

Location of plant	Rate per hundredweight
In the State of Tennessee and 50 or more miles from the city hall in Memphis.	Subtract 25 cents.

. . . . .

Proposed by Mid-America Dairymen, Inc.:

Proposal No. 3—Greater Kansas City, Part 1064: Amend § 1064.52 to read as follows:

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone 1 shall include the Missouri counties of Andrew, Atchison, Bates, Buchanan, Cass, Clay, Clinton, Daviess, De Kalb, Gentry, Henry, Holt, Jackson, Johnson, Lafayette, Nodaway, Pettis, Platte, St. Clair, and Worth and the Kansas counties of Atchison, Brown, Doniphan, Douglas, Jefferson, Johnson, Leavenworth, Nemaha, and Wyandotte.

(2) Zone 2 shall include the Kansas counties of Franklin, Jackson, Lyon, Marshall, Miami, Osage, Pottawatomie, Republic, Shawnee, Wabaunsee, and Washington.

(3) Zone 3 shall include the Kansas counties of Clay, Cloud, Dickinson, Geary, Morris, Ottawa, Riley and Saline.

(b) For producer milk received at a pool plant (or diverted to a nonpool plant) and which is classified as Class I milk, the Class I price specified § 1064.50(a) shall be adjusted for the location of the plant receiving the milk as follows:

(1) In Zone 1, no adjustment.

(2) In Zone 2, plus 10 cents.

(3) In Zone 3, plus 20 cents.

(4) For milk received from producers at a pool plant located outside Zones 1, 2, and 3 and more than 70 miles by the shortest highway distance as measured by the market administrator from the city hall in Kansas City, Missouri, the price shall be reduced 15 cents, plus an additional 2.0 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from the city hall.

(c) Same as the present paragraph (b).

(d) Same as the present paragraph (c).

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 4—Southwest Plains, Part 1106:

A. Revise § 1106.2 to read as follows:

The "Southwest Plains marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishment if any part thereof is within any of the listed counties:

Zone I.—In the State of Oklahoma

Caddo	Lincoln
Canadian	McClain
Cleveland	McIntosh
Coal	Okfuskee
Garvin	Oklahoma
Grady	Pittsburg
Haskell	Pontotoc
Hughes	Pottawatomie
Latimer	Seminole
LeFlore	Sequoyah

Zone II.—In the State of Oklahoma

Atoka	Johnston
Bryan	Kiowa
Carter	Love
Choctaw	Marshall
Comanche	McCurtain
Cotton	Murray
Greer	Pushmataha
Harmon	Stephens
Jackson	Tillman
Jefferson	

Zone III.—In the State of Oklahoma

Adair	Mayes
Alfalfa	Major
Beaver	Muskogee
Beckham	Noble
Blaine	Nowata
Cherokee	Okmulgee
Cimarron	Osage
Craig	Ottawa
Creek	Pawnee
Custer	Payne
Delaware	Roger Mills
Dewey	Rogers
Ellis	Texas
Garfield	Tulsa
Grant	Wagoner
Harper	Washita
Kay	Washington
Kingfisher	Woods
Logan	Woodward

Zone IV.—In the State of Kansas

Allen	Labette
Bourbon	Montgomery
Chautauqua	Neosho
Cherokee	Wilson
Crawford	

In the State of Missouri

Barton	Newton
Jasper	Vernon

Zone V.—In the State of Kansas

Barber	Marion
Barton	McPherson
Butler	Pawnee
Comanche	Pratt
Cowley	Reno
Edwards	Rice
Ellis	Rush
Harper	Russell
Harvey	Sedgwick
Kingman	Stafford
Kiowa	Sumner

Zone VI.—In the State of Kansas

Clark	Hamilton
Finney	Haskell
Ford	Hodgeman
Gove	Kearny
Grant	Lane
Gray	Meade
Greeley	Morton

Ness	Stevens
Scott	Trego
Seward	Wichita
Stanton	

B. Revise § 1106.52(a) (1) through (9) to read as follows:

(1) For a plant located within one of the zones set forth in § 1106.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone I	No Adjustment.
Zone II	Plus 23 cents.
Zone III	Minus 18 cents.
Zone IV	Minus 47 cents.
Zone V	Minus 37 cents.
Zone VI	Minus 27 cents.

(2) For a plant located in any of the following Kansas counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Anderson, Atchison, Brown, Chase, Clay, Cloud, Coffey, Dickinson, Doniphan, Douglas, Franklin, Geary, Jackson, Jefferson, Johnson, Leavenworth, Linn, Lyon, Marshall, Miami, Morris, Nemaha, Osage, Ottawa, Pottawatomie, Republic, Riley, Saline, Shawnee, Wabaunsee, Washington, Wyandotte.

(ii) *Minus 42 cents.* Elk, Greenwood, Woodson.

(iii) *Minus 20 cents.* Cheyenne, Decatur, Ellsworth, Graham, Jewell, Lincoln, Logan, Mitchell, Norton, Osborne, Phillips, Rawlins, Rooks, Sheridan, Sherman, Smith, Thomas, Wallace.

(3) For a plant located in any of the following Missouri counties, the adjustment shall be as follows:

(i) *Minus 85 cents.* Adair, Andrew, Atchison, Audrain, Bates, Benton, Boone, Buchanan, Caldwell, Callaway, Camden, Carroll, Cass, Chariton, Clark, Clay, Clinton, Cole, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Howard, Jackson, Johnson, Knox, Lafayette, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Moniteau, Monroe, Montgomery, Morgan, Nodaway, Osage, Pettis, Pike, Platte, Putnam, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, Sullivan, St. Clair, Worth.

(ii) *Minus 78 cents.* Bollinger, Cape Girardeau, Franklin, Jefferson, Perry, St. Charles, St. Louis, City of St. Louis, St. Francois, Ste. Genevieve, Warren, Washington.

(iii) *Minus 47 cents.* Barry, Butler, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Gasconade, Greene, Howell, Iron, Laclede, Lawrence, Madison, Maries, McDonald, Mississippi, New Madrid, Oregon, Ozark, Pemiscot, Phelps, Polk, Pulaski, Reynolds, Ripley, Scott, Shannon, Stoddard, Stone, Taney, Texas, Wayne, Webster, Wright.

(4) For a plant located in any of the following Louisiana parishes the adjustments shall be as follows:

(i) *Plus 51 cents.* Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Ouachita, Red River, Richland, Sabine, Tensas, Union, Webster, West Carroll, Winn.

(ii) *Plus 77 cents.* Allen, Avoyelles, Beauregard, East Feliciana, Evangeline, Livingston, Rapides, St. Helena, St. Tammany, Tangipahoa, Vernon, Washington, West Feliciana.

(iii) *Plus 101 cents.* Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, Iberia, Iberville, Jefferson Davis, Jefferson, Lafayette, Lafourche, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, Terrebonne, Vermilion, West Baton Rouge.

(5) For a plant located in any of the following Texas counties the adjustments shall be as follows:

(i) *Plus 26 cents.* Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

(ii) *Plus 31 cents.* Bowie and Cass.

(iii) *Minus 28 cents.* Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(iv) *Plus 51 cents.* Camp, Collin, Cooke, Dallas, Delta, Denton, Ellis, Fannin, Franklin, Grayson, Hill, Hood, Hopkins, Hunt, Johnson, Kaufman, Lamar, Morris, Parker, Rains, Red River, Rockwall, Somervell, Tarrant, Titus, Upshur, Van Zandt, Wise, Wood.

(v) *Minus 42 cents.* El Paso.

(vi) *Plus 51 cents.* Gregg, Harrison, Marion, Panola, Rusk Smith.

(vii) *Minus 28 cents.* Bailey, Castro, Cochran, Cottle, Crosby, Dickens, Floyd, Gaines, Garza, Hale, Hockley, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum.

(viii) *Plus 98 cents.* Anderson, Fell, Bosque, Cherokee, Comanche, Coryell, Erath, Falls, Freestone, Hamilton, Henderson, Lampasas, Limestone, McLennan, Mills, Navarro.

(ix) *Plus 73 cents.* Angelina, Houston, Jasper, Leon, Nacogdoches, Newton, Polk, Sabine, San Augustine, Shelby, Trinity, Tyler.

(x) *Plus 77 cents.* Brazos, Burleson, Grimes, Madison, Milam, Robertson, Walker.

(xi) *Plus 51 cents.* Andrews, Borden, Brown, Callahan, Coke, Coleman, Dawson, Eastland, Ector, Fisher, Foard, Glasscock, Haskell, Howard, Jack, Jones, Kent, King, Knox, Martin, Midland, Mitchell, Nolan, Palo Pinto, Runnels, Scurry, Shackelford, Stephens, Sterling, Stonewall, Taylor, Throckmorton, Tom Green, Young.

(xii) *Plus 86 cents.* Bastrop, Burnet, Lee, Travis, Williamson.

(xiii) *Plus 105 cents.* Austin, Brazoria, Chambers, Colorado, Fayette, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, San Jacinto, Waller, Washington.

(xiv) *Plus 93 cents.* Bexar, Caldwell, Comal, DeWitt, Gonzales, Guadalupe, Hays, Jackson, Lavaca, Matagorda, Wharton, Wilson.

(xv) *Plus 104 cents.* Aransas, Bee, Calhoun, Goliad, Karnes, Live Oak, Refugio, Victoria.

(xvi) *Plus 117 cents.* Brooks, Duval, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio.

(xvii) *Plus 126 cents.* Cameron, Hidalgo, Willacy.

(xviii) All other areas in the State of Texas not listed shall be plus 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is from the city hall in Oklahoma City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

(6) For a plant located in any of the following New Mexico counties the adjustments shall be as follows:

(i) *Minus 57 cents.* Chaves, Colfax, Curry, DeBaca, Eddy, Lea, Quay, Roosevelt, San Juan, Union.

(ii) *Minus 42 cents.* Bernalillo, Catron, Dona Ana, Grant, Guadalupe, Harding, Hidalgo, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia.

(7) For a plant located in any of the following Colorado counties the adjustments shall be as follows:

(i) *Minus 17 cents.* Baca, Bent, Cheyenne, Kiowa, Kit Carson, Lincoln, Logan, Phillips, Prowers, Sedgwick, Washington, Yuma.

(ii) *Minus 57 cents.* Archuleta, La Plata, Montezuma.

(iii) *Minus 4 cents.* Adams, Arapahoe, Boulder, Clear Creek, Crowley, Custer, Denver, Douglas, Elbert, El Paso, Gilpin, Huerfano, Jefferson, Larimer, Las Animas, Morgan, Otero, Park Pueblo, Teller, Weld.

(iv) *No adjustment.* Any Colorado county not specified in paragraph (a)(7) (i), (ii) or (iii) of this section.

(8) For a plant located in any of the following Arkansas counties the adjustments shall be as follows:

(i) *Minus 22 cents.* Benton, Boone, Carroll, Madison, Marion, Washington.

(ii) *Plus 31 cents.* Little River and Miller.

(iii) *No adjustment.* Any Arkansas county not specified in paragraph (a)(8) (i) or (ii) of this section.

(9) For a plant located outside the areas described in paragraph (a) (1) through (8) of this section, the adjustment shall be minus 22 cents plus an additional reduction of 2.25 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the nearer of the City Halls in Tulsa or Ponca City, Oklahoma (based on the shortest hard-surfaced highway distance as determined by the market administrator).

* * * * *

Proposed by Land O'Lakes, Mid-West Dairymen's Co., Prairie Farms Dairy, Inc., and Wisconsin Dairies:

Proposal No. 5—Southwest Plains, Part 1106:

Revise § 1106.52(a)(3)(iii) so that the net effect would price a plant located in Greene County, Missouri, at the same Class I differential as Kansas City, Missouri, or St. Louis, Missouri, whichever is higher.

Proposed by Jackson Ice Cream Co., Inc.:

Proposal No. 6—Southwest Plains, Part 1106:

Revise § 1106.52(a)(1) to set the location adjustment for Zone V at minus 60 cents.

Proposed by Steffen Dairy Foods Company:

Proposal No. 7—Southwest Plains, Part 1106:

Revise § 1106.52(a)(1) to set the location adjustment for Zone V at minus 78 cents.

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 8—Central Arkansas, Part 1108:

Revise § 1108.52(a) to read as follows:

(a) For milk received at a plant from producers or a handler described in § 1108.9(c) and which is classified as Class I milk without movement in bulk form to another pool plant at which a higher Class I price applies the price specified in § 1108.50(a) shall be adjusted by the amount stated in paragraphs (a) (1) through (4) of this section for the location of such plant.

(1) For a plant located within the Arkansas counties of Arkansas, Clark, Cleburne, Cleveland, Conway, Crawford, Crittendon, Cross, Dallas, Desha, Faulkner, Franklin, Garland, Grant, Hot Springs, Howard, Jefferson, Johnson, Lee, Lincoln, Logan, Lonoke, Monroe, Montgomery, Perry, Phillips, Pike, Polk, Pope, Prairie, Pulaski, Saline, Scott, St. Francis, Sebastian, Sevier, Van Buren, White, Woodruff, or Yell or in the States of Oklahoma or Tennessee, no location adjustment shall apply:

(2) For a plant located in that portion of the State of Arkansas lying south of the no location adjustment zone specified in paragraph (a)(1) of this section or located in the Texas counties of Bowie or Cass, the adjustment shall be plus 31 cents;

(3) For a plant located in that portion of the State of Arkansas lying to the north of the no location adjustment zone specified in paragraph (a)(1) of this section the adjustment shall be minus 22 cents;

(4) For a plant located outside the areas specified in paragraphs (a) (1), (2), and (3) of this section the adjustment shall be 2.1 cents for each 10 miles or fraction thereof (rounded to the nearest cent) that such plant is located from the nearer of the county courthouse in Forrest City, Arkansas, or the State Capitol in Little Rock, Arkansas (based on the shortest hard-surfaced highway distance as determined by the market administrator) as follows:

(i) For a plant located in the States of Louisiana, Mississippi, or Texas (except the counties of Bowie or Cass) the adjustment shall be plus; and

(ii) For all other plants the adjustment shall be minus.

* * * * *

Proposed by Dean Foods, Inc.:

Proposal No. 9—Rio Grande Valley, Part 1138:

Revise § 1138.52 (a) and (b) by putting the entire order area under the same price as stated in § 1138.50(a).

Proposal No. 10—Texas, Part 1126:

Revise the table of location adjustments in § 1126.52(a)(1) by changing the Zone 6 location adjustment to minus 50 cents from plus 25 cents.

Proposed by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc.:

Proposal No. 11—Texas, Part 1126:

Revise § 1126.52(a) to read as follows:

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (7) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1-A	Minus 25 cents.
Zone 2	No adjustment.
Zone 3	Plus 19 cents.
Zone 4	Plus 22 cents.
Zone 5	Plus 30 cents.
Zone 6	No adjustment.
Zone 7	Plus 39 cents.
Zone 8	Plus 54 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents
Zone 12	Plus 77 cents.

(2) For a plant located in the following Federal order marketing areas, the adjustment shall be as set forth herein:

(i) Lubbock-Plainview, Texas (Order 1120), minus 79 cents.

(ii) Texas Panhandle (Order 1132), minus 79 cents.

(iii) For a plant located in or regulated by the Fort Smith, Arkansas, order (Order 1102), the price adjustment under this order shall equate prices determined pursuant to the Fort Smith order.

(iv) For a plant located in or regulated by the Central Arkansas order (Order 1108), the price adjustment under this order shall equate prices determined pursuant to the Central Arkansas order.

(3) For a plant located in the Southwest Plains marketing area or which is regulated by such order (Order 1106), the price adjustment under this order shall equate prices determined pursuant to Order 1106;

(4) For a plant located in Bowie or Cass Counties, Texas, or in Little River or Miller Counties, Arkansas, the adjustment shall be minus 20 cents;

(5) For a plant located in the States of Louisiana or New Mexico or in El Paso County, Texas, no adjustment shall apply;

(6) For a plant located in the State of Texas but outside any area described in paragraphs (a) (1), (2) and (4) of this section, the adjustment shall be the adjustment applicable at Corpus Christi, San Angelo, or San Antonio, Texas, whichever city is nearest; and

(7) For a plant located outside the areas described in paragraphs (a) (1) through (6) of this section, the adjustment shall be minus 2.1 cents per hundredweight for each 10 miles or fraction thereof that such plant is located from the Dallas, Texas, city hall, such distance to be based on the shortest hard-surfaced highway distance as determined by the market administrator.

* * * * *

Proposed by the Southland Corporation and Hygeia Dairy Co.:

Proposal No. 12—Texas, Part 1126:

A. Revise § 1126.2 to reflect the following:

Zone 1

Camp, Collin, Dallas, Denton, Ellis, Hill (Blum and Itasca divisions only), Hood, Hunt, Johnson, Kaufman, Parker, Rains, Rockwall, Somervell, Tarrant, Upshur, Van Zandt, Wise, wood.

Zone 1–A

Archer, Baylor, Clay, Hardeman, Montague, Wichita, Wilbarger.

Zone 1–B

Cooke, Delta, Fannin, Franklin, Grayson, Hopkins, Lamar, Morris, Red River, Titus.

B. Revise § 1126.52(a) to read as follows:

(a) For milk received at a plant from producers or a handler described in § 1126.9(c) and which is classified as Class I milk without movement in bulk form to a pool distributing plant at which a higher Class I price applies, the price specified in § 1126.50(a) shall be adjusted by the amount stated in paragraph (a) (1) through (9) of this section for the location of such plant:

(1) For a plant located within one of the zones set forth in § 1126.2, the adjustment shall be as follows:

	Adjustment per hundredweight
Zone 1	No adjustment.
Zone 1–A	Minus 12 cents.
Zone 1–B	Minus 18 cents.
Zone 2	Plus 6 cents.
Zone 3	Plus 15 cents.
Zone 4	Plus 18 cents.
Zone 5	Plus 20 cents.
Zone 6	Plus 25 cents.
Zone 7	Plus 30 cents.
Zone 8	Plus 36 cents.
Zone 9	Plus 42 cents.
Zone 10	Plus 53 cents.
Zone 11	Plus 66 cents.
Zone 12	Plus 75 cents.

(2) For a plant located in any of the following Texas counties, the adjustment shall be as follows:

(i) *Minus 79 cents.* Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Floyd, Gaines, Garza, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Lynn, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randell, Roberts, Sherman, Swisher, Terry, Wheeler, Yoakum.

(3) For a plant located in any of the following Oklahoma counties, the adjustment shall be as follows: (align with Southwest Plains order).

(4) For a plant located in Bowie or Cass Counties, Texas, or in Little River or Miller County, Arkansas, the adjustment shall be minus 18 cents.

(5) For a plant located in Concho, Edwards, Kimble, Kinney, Llano, Mason, McCulloch, Menard, San Saba, Schleicher, Sutton, or Val Verde, Texas, the adjustment shall be plus 25 cents.

(6) For a plant located in Atascosa, Bandera, Blanco, Dimmit, Frio, Gillespie, Kendall, Kerr, La Salle, Maverick, McMullen, Medina, Real, Uvalde, or Zavala, Texas, the adjustment shall be plus 42 cents.

(7) For a plant located in Jim Hogg, Starr, Webb, or Zapata, Texas, the adjustment shall be plus 66 cents.

(8) For a plant located in the State of Louisiana no adjustment shall apply.

(9) For a plant located outside the areas described in paragraphs (a) (1) through (8) of this section, the adjustment shall be minus 2.2 cents per hundredweight for each 10 miles or a fraction thereof that such plant is located from the Dallas, Texas, city hall, such distance to be based on the shortest hard-surfaced highway distance as determined by the market administrator.

Proposed by Borden, Inc.:

Proposal No. 13—Texas, Part 1126:

Revise § 1126.52(a)(1) to reduce the Zone 8 location adjustment from plus 54 cents to plus 36 cents.

Proposed by Schepps Dairy, Inc.:

Proposal No. 14—Texas, Part 1126:

Revise § 1126.52(a)(1) to increase the Zone 8 location adjustment from plus 54 cents to plus 75 cents.

Proposed by The Kroger Co.:

Proposal No. 15—Texas, Part 1126:

A. Revise § 1126.2 by deleting Montgomery County from Zone 8 and by adding a new Zone 8A to include Montgomery County.

B. Revise § 1126.52(a)(1) to increase the Zone 8 location adjustment from plus 54 cents to plus 64 cents and adding a new Zone 8A with adjustment per hundredweight of plus 54 cents or as an alternative, a rate from Zone 8A of plus 44 cents.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 16:

Make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrators of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator of each of the 7 orders

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, DC, on February 14, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–3756 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1230

Pork Promotion, Research, and Consumer Information; Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish procedures for selecting nominees or appointment to the initial National Pork Producers Delegate Body as provided for in the Pork Promotion, Research, and Consumer Information Act (Title XVI, Subtitle B, of the Food Security Act of 1985, approved December 23, 1985). The Delegate Body would nominate persons for appointment to the National Pork Board, recommend the rate of assessment under the order, and determine the amount of assessments collected in a State that each State association would receive.

DATE: Comments must be received by March 10, 1986.

ADDRESS: Send two copies of comments to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; USDA; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250; where they will be available for public inspection during normal business hours.

FOR FURTHER INFORMATION CONTRACT: Ralph L. Tapp, Chief, Marketing Programs and Procurement Branch; Livestock and Seed Division; AMS, USDA; Washington, DC 20250. (Telephone: 202/447–2650).

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures and Executive Order No. 12291 and has been designated as a "non-major" rule.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small business entities. The rule proposed herein pertains only to the procedures as set forth in the Pork Promotion, Research, and Consumer Information Act, hereinafter referred to as the Act, for (1) establishing the eligibility of assocations, organizations, and individuals to make nominations, (2) submitting nominations of candidates for election, and (3) conducting statewide elections.

The period for filing comments is limited to 15 days so that State associations, organizations, and others who may select nominee for the Delegate Body may begin planning for the nomination process as soon as possible. Nomination procedures may take considerable time to complete, and early estabilishment of such procedures should prevent unnecessary delay in selecting and appointing a Delegate Body in the event an order is issued.

The Act authorizes the establishment of a national pork promotion, research, and consumer information order. The order would provide for the establishment of a Delegate Body which would nominate members to a 15 member National Pork Board.

The initial Delegate Body would be comprised of 165 pork producers and importers appointed by the Secretary not later than 60 days after the effective date of the order from nominations submitted by the industry. The duties and responsibilities of the Delegate Body shall be specified in the order.

The number of producer members from each State would be determined pursuant to section 1617 of the Act, based upon statistics published in the "Livestock and Meat Statistics" (statistical bulletin No. 715) and the "Meat, Animal, Production, Disposition, and Income (1984 Summary)." (Copies of the former document may be obtained by calling the Government Printing Office at 202/783–3238. Copies of the latter document may be obtained by calling the Crop Reporting Board Publications office at 202/447–4021.)

The number of importer members would be determined based upon statistics published by the Foreign Agricultural Service in "Dairy, Livestock, and Poultry Trade and Prospects." (Copies can be obtained by requesting in writing subscription No. 10005 from: Foreign Agricultural Service, Information Division, Room 4644–S, USDA, Washington, DC 20250.)

To ensure that nominees represent the interests of pork producers and importers, State associations and importer organizations as well as other eligible organizations and individuals would be able to nominate members for appointment to the Delegate Body. Under the Act, State association means the single organization of pork producers in a State that is organized under the laws of the State in which such association operates and is recognized by the chief executive officer of such State as representing the pork producers of such State, or if such organization did not exist on January 1, 1986, an organization that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State. Qualified individuals could be nominated as candidates for the elections by the filing of a written petition with the Secretary.

A State association wishing to make nominations would be required to furnish the Secretary with a written statement signed by an official of that association attesting that it meets the State association requirements under the Act as well as any other information deemed relevant by the Secretary. Individual pork producers who are residents of a State could be nominated as candidates for the Delegate Body by a written petition containing the signatures of at least 100 pork producers or 5 percent of the pork producers in such State, whichever is less. The number of signatures required would be determined from statistics published in the December 1985 issue of "Hogs and Pigs" to establish compliance with the 5 percent requirement. (Copies may be requested from Crop Reporting Board Publications, telephone 202/447–4021.) Importer organizations wishing to make nominations would be required to submit written evidence that they are established, stable organizations representing a large number of importers. The required written statements or information necessary for an eligibility determination could be submitted with the official nomination forms or in connection with requests for the official nomination forms. Nomination forms may be obtained by contacting the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; U.S. Department of Agriculture; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650).

Statewide elections would be held to determine the nominees who would be among those considered by the Secretary for appointment to the Delegate Body. Ballots containing the names of candidates nominated from each State would be prepared and distributed to the States that the candidates represent.

The Secretary would have the authority to verify information submitted, if necessary, to determine an individual's, an association's, or an organization's eligibility to nominate members to the Delegate Body.

Information obtained from individuals, associations, and organizations would be kept confidential, except that the Secretary could release general statements based upon data obtained from a number of individuals, associations, or organizations which do not identify the information obtained from any specific individual, association, or organization.

The Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In March 1983, the Office of Management and Budget (OMB) implemented the Act by adopting procedures contained in Part 1320 of 5 CFR Chapter III. According to these procedures, the information collection request contained in this proposed subpart has been approved by OMB and has been assigned OMB Control No. 0581–0151.

Because of the need for expedited handling, it is found to be impractical, unnecessary, and contrary to the public interest to provide a comment period which is longer than 15 days. The numbers of each section under this proposed subpart have been assigned to facilitate the publication of the proposed rule. Consequently, these sections may be revised and/or renumbered in the final rule.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Pork and pork products.

It is proposed that Chapter XI of Title 7 of the Code of Federal Regulations be amended by adding a new Part 1230 to read as follows:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

Authority: 7 U.S.C. 4801 note–4819.

Subpart A—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

§ 1230.501 General.

Associations, organizations, or individuals must be recognized by the Secretary as being eligible to participate in nominating pork producers as candidates for statewide elections of nominees for appointment to the initial Delegate Body. The number of nominees required for each alloted position will be determined by the Secretary. Additionally, the Secretary shall provide that organizations or associations which represent importers of porcine animals, pork, and pork products may nominate such importers for appointment as members of the Delegate Body. The making and receiving of nominations and the election process shall be conducted in accordance with this subpart.

§ 1230.502 Definitions.

As used in this subpart:

"Act" means the Pork Promotion, Research, and Consumer Information Act of 1985, Title XVI, Subtitle B, of Pub. L. 99–198, approved December 23, 1985.

"Delegate Body" means the National Pork Producers Delegate Body established by the Secretary.

"Department" means the United States Department of Agriculture.

"Importer" means a person who imports porcine animals, pork, or pork products into the United States.

"Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

"Person" means and individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

"Porcine animal" means a swine raised for slaughter, feeder pigs, or seed stock.

"Pork" means the flesh of a porcine animal.

"Pork product" means a product produced or processed in whole or in part from pork.

"Producer" means a person who produces porcine animals in the United States for sale in commerce.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereinafter be delegated, to act in the Secretary's stead.

"State" means each of the 50 States.

"State association" means the single organization of pork producers in a State that is (1) organized under the laws of the State in which such association operates; and (2) recognized by the chief executive officer of such State as representing the pork producers of such State; or if such organization did not exist on January 1, 1986, an organziation that represents not fewer than 50 pork producers who market annually, in the aggregate, not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State.

§ 1230.503 Administration.

The Livestock and Seed Division shall have the responsibility for administrating the provisions of this subpart.

§ 1230.504 Eligibility to nominate candidates for election and appointment to the initial Delegate Body.

(a) *States with existing State associations.* Existing State associations are eligible to submit names of candidates for election as producer nominees for appointment by the Secretary to the Delegate Body. However, such State associations must provide the Department with written verification that they comply with the definition of a State association in § 1230.502.

(b) *States without existing State associations.* In the absence of an existing State association referred to in paragraph (a) of this section, an organization which represents not fewer than 50 pork producers who market annually in the aggregate not less than 10 percent of the volume (measured in pounds) of porcine animals marketed in such State is eligible to submit candidates for election and appointment to the Delegate Body. Such organization must provide the Department with a written statement containing the number of pork producers in the State that it represents and the aggregate volume in pounds of porcine animals marketed annually by those producers in that State.

(c) *Qualified individuals.* Individual pork producers may be nominated as candidates from the State in which they reside for election and appointment to the Delegate Body. A nomination must be supported by a written petition signed by 100 producers or 5 percent of the pork producers in such State, whichever is less. Written petitions must be submitted to the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Divisions; Agricultural Marketing Service, USDA; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250.

(d) *Associations and organizations representing importers.* The determination by the Secretary as to the eligibility of importer associations and organizations to nominate members to the Delegate Body shall be based on a factual written report submitted to the Department by importer organizations or associations. The report shall contain:

(1) The number of importer members by type of product (i.e., porcine animals, pork, pork products).

(2) Annual imported volume in pounds of pork and pork products and/or the number of head of porcine animals.

(3) Evidence as to the stability and permanency of the organization (i.e., years in existence).

(4) The names of the countries of origin of such imported porcine animals, pork, and pork products.

(5) Such other information as the Secretary may require.

(e) The information required in paragraphs (a), (b), (d), or the petition required in paragraph (c) of this section may be submitted to the Secretary either with completed nomination forms or at

the time a request is made for official nomination forms. The Secretary may also consider additional relevant information. The Secretary's determination of eligibility to nominate shall be final.

(f) *Official Nomination Forms.* Official nomination forms, "Nomination of Pork Producers for Election and Appointment to the National Pork Producers Delegate Body," must be used to submit the names of producers nominated as candidates for statewide elections. A biographical data sheet for each nominee listed on the "Nomination of Pork Producers for Election and Appointment to the National Pork Producers Delegate Body" must be attached to that form. Official nomination forms, biographical data sheets, and additional information on nominations can be obtained by calling or writing the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Services, U.S. Department of Agriculture; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650).

§ 1230.505 Nomination of members for appointment to the Delegate Body.

All nominations to the initial Delegate Body shall be made in the following manner:

(a) *Producer members.* The producer nominees from each State for appointment by the Secretary to the Delegate Body shall be determined by statewide elections as described in § 1230.508.

(b) *Importer members.* (1) Eligible importer associations or organizations shall submit to the Department the names of nominees for each of the allotted importer positions on the Delegate Body. Each nomination must be accompanied by biographical data which shall include the following information: (i) Name, date and place of birth, U.S. citizenship, Social Security number, residence address and telephone number; (ii) business address, telephone number, and brief description of business including volume and types of products imported, and (iii) a list of importer organizations of which the nominee is a member and current positions in such organizations held by the nominee.

(2) Eligible importer associations or organizations will be given 45 days in which to submit nominations to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250.

(3) If there are two or more eligible importer associations or organizations, they may jointly nominate importers for each allotted position on the Delegate Body.

§ 1230.506 Initial Delegate Body membership.

(a) *Producers.* The number of producer members appointed to the initial Delegate Body shall be determined pursuant to the following criteria.

(1) Shares shall be assigned to each State for the 1986 calendar year on the basis of one share for each $400,000 of farm market value of porcine animals marketed from such State as determined by the Secretary based on the annual average of farm market value for the calendar years 1982 through 1984 rounded to the nearest $400,000.

(2) If the number of shares assigned to a State is:

(i) Less than 301, the State shall receive a total of two producer members;

(ii) More than 300 but less than 601, the State shall receive a total of three producer members;

(iii) More than 600 but less than 1,001, the State shall receive a total of four producer members; and

(iv) More than 1,000, the State shall receive four producer members, plus one additional member for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(3) Based on the criteria contained in paragraph (a) (1) and (2) of this section, the number of members on the Delegate Body allotted to each State shall be: Alabama 2; Alaska 2; Arizona 2; Arkansas 2; California 2; Colorado 2; Connecticut 2; Delaware 2; Florida 2; Georgia 3; Hawaii 2; Idaho 2; Illinois 10; Indiana 7; Iowa 23; Kansas 4; Kentucky 3; Louisiana 2; Maine 2; Maryland 2; Massachusetts 2; Michigan 3; Minnesota 7; Mississippi 2; Missouri 6; Montana 2; Nebraska 6; Nevada 2; New Hampshire 2; New Jersey 2; New Mexico 2; New York 2; North Carolina 4; North Dakota 2; Ohio 4; Oklahoma 2; Oregon 2; Pennsylvania 2; Rhode Island 2; South Carolina 2; South Dakota 4; Tennessee 3; Texas 2; Utah 2; Vermont 2; Virginia 2; Washington 2; West Virginia 2; Wisconsin 4; and Wyoming 2.

(b) *Importers.* The number of importer members to be appointed to the initial Delegate Body shall be determined pursuant to the following criteria.

(1) Shares shall be assigned on the basis of one share for each $575,000 of market value of marketed porcine animals, pork, or pork products based on the annual average of imports for the calendar years 1982 through 1984 rounded to the nearest $575,000.

(2) The number of importer members appointed to the Delegate Body shall equal a total of:

(i) Three members for the first 1,000 such shares; and

(ii) One additional member for each 300 additional shares in excess of 1,000 shares rounded to the nearest 300.

(3) Based on the criteria contained in paragraph (b) (1) and (2) of this section, importers shall be entitled to four members on the Delegate Body.

§ 1230.507 Nominations of producers as candidates for election.

(a) The candidates for election in each State shall be nominated by eligible State associations, organizations, and qualified individuals as described in § 1230.504. Nominees must be pork producers and reside in the State they will represent as candidates in the election. Official nomination forms, listing the names of the nominees and a completed and signed Biographical Data Sheet for each nominee shall be submitted to the Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, U.S. Department of Agriculture; 14th and Independence Avenue SW., Room 2610–S; Washington, DC 20250. A 45-day time period will be provided for submitting nominations for candidates in the elections.

(b) In the case of a State that does not have an eligible State association, or if an eligible State association, other organization, or an eligible qualified individual does not submit nominations, the Secretary shall obtain nominations in such States from one or more of the following: (1) General farm organizations, (2) State Departments of Agriculture, and (3) individuals considered by the Secretary to be knowledgeable about the pork industry in such States.

§ 1230.508 Election process.

(a) *General.* To appoint the initial Delegate Body, the Secretary shall call for statewide elections of producers nominated as candidates for appointment. To facilitate the timely implementation of the pork promotion, research, and consumer information program, the elections shall be conducted prior to the effective date of the final order. The decision to conduct an election in each State shall be based on the number of candidates nominated in each State.

(b) *Preparation and distribution of ballots.* A master ballot shall be

prepared for each State containing the names of eligible candidates nominated by State associations, organizations, or interested individuals under § 1230.507. A master ballot will list the names of nominees from each State and the cities in which the nominees reside. The master ballot for each State will be reproduced and distributed to designated voting places within the State. Each ballot will contain instructions for its completion.

(c) *Notice.* The Secretary shall give public notice of the statewide elections by publication in one or more newspapers of general circulation in each State and in pork production and agricultural trade publications at least 1 week prior to the election and in any other reasonable manner determined by the Secretary. The notice shall set forth the dates, times, and places for voting and such other information as the Secretary considers necessary.

(d) *Time and place of voting.* Statewide elections will be held in a timely manner following the distribution of the ballots to the designated voting places in each State. Persons eligible to vote shall register to vote and complete their ballots simultaneously at the designated voting places in each State. Voting shall take place over a 1-week period, Monday through Friday, during normal business hours of the designated voting places.

(e) *Voting eligibility requirements.* Any person who produces procine animals in the United States for sale in commerce shall be eligible to vote in the election in the State in which such person resides.

(f) *Voting procedures.* (1) *Voting in person.* Each eligible voter shall register at the time of voting by signing a voter registration list which will signify that such voter is a pork producer as defined in § 1230.502 and a resident of that State. Upon registration, each eligible voter will receive a ballot containing the names and the resident cities of the pork producer candidates. Voting shall be by secret ballot under the supervision of the Secretary's designated representative. All ballots shall be placed in sealed ballot boxes or other suitable receptacles.

(2) *Absentee ballot.* Eligible voters, unable to vote in person, may obtain a ballot and a voter registration form by mail. To ensure confidentiality of the vote, the voter shall seal the completed ballot in a separate envelope and include it in another envelope containing the signed registration form. The ballot shall remain sealed until the counting of all such ballots. Absentee ballots may be obtained from and must be returned to the address designated by the Secretary, which will be provided in public announcements of the statewide elections.

(g) *Procedures for determining the elected candidates.* After the voting period ends, the ballots cast in each designated voting place including any absentee ballots shall be counted in a manner and by a person or persons designated by the Secretary. The results of the election in each State shall be forwarded to the Department. Those candidates in each State receiving the highest number of votes shall be submitted to the Secretary for consideration as appointees to the Delegate Body.

§ 1230.509 Acceptance of appointment.

Producers and importers nominated to the Delegate Body must signify in writing their intent to serve if appointed.

§ 1230.510 Verification of information.

The Secretary may require verification of any information submitted and may procure such other information as may be required to determine whether an association, organization, or individual is eligible to nominate or be nominated for appointment to the initial Delegate Body under the Act.

§ 1230.511 Confidential treatment of information.

All documents submitted by associations, organizations, and individuals and information otherwise obtained by the Department pursuant to this subpart shall be kept confidential by all employees of the Department. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed and then only in the issuance of general statements based upon the reports of a number of persons subject to the order or statistical data collected therefrom, when such a statement or data does not identify the information furnished by any one person.

§ 1230.512 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581–0151 has been assigned.

Signed at Washington, DC: February 18, 1986.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 86–3835 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1260

Beef Promotion and Research; Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish nomination procedures and procedures for determining the eligibility of State and importer organizations, associations, and others to make nominations for appointment to a Cattlemen's Beef Promotion and Research Board, as provided for in the Beef Promotion and Research Act of 1985, which amended the Beef Research and Information Act (7 U.S.C. 2901–2918). The Board would administer the industry-funded promotion and research program authorized by the Act.

DATE: Comments must be received by March 10, 1986.

ADDRESS: Send two copies of comments to the Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW.; Room 2610–S; Washington, DC 20250; where they will be available for public inspection during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs and Procurement Branch; Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650.)

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures and Executive Order No. 12291 and has been designated as a "nonmajor" rule.

The Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities. The rule proposed herein pertains only to (1) the procedures for establishing the eligibility of organizations, associations, and others to nominate cattle producers and importers for appointment by the Secretary of the Cattlemen's Beef Promotion and Research Board and (2) the procedures for submitting such nominations.

The period for filing comments is limited to 15 days so that State organizations, associations, and others who may select nominees for the Cattlemen's Beef Promotion and

Research Board may begin planning for a nomination process as soon as possible. Nomination procedures may take considerable time to complete, and early establishment of such procedures should prevent unnecessary delay in selecting nominees and appointing a Board.

The Beef Promotion and Research Act of 1985, approved December 23, 1985, authorizes the establishment of a national beef promotion and research order. The order would provide for the establishment of a Cattlemen's Beef Promotion and Research Board which would elect 10 members to a 20 member beef promotion operating committee. The remaining 10 members would be elected by a federation that includes as members the qualified State beef councils.

The Cattlemen's Beef Promotion and Research Board would be comprised of approximately 120 cattle producers and importers nominated for appointment by the Secretary to the Board. The duties and responsibilities of the Board would be specified in the order.

The Act provides that the Secretary shall either certify or otherwise determine the eligibility of State or importer organizations, associations, or others to nominate members to the Board to ensure that nominees represent the interests of cattle producers and importers. Certification procedures are set forth in this proposed rule. The certification of State producer organizations or associations representing cattle producers would be based on a factual report containing information required by the Act including, but not limited to (1) size and composition of active membership, (2) the proportional representation of cattle producers within the membership, (3) the evidence that the State organizations or associations are well-established and permanent, and (4) the function and purpose of the State organizations or associations as they relate to cattle producers and their economic welfare. State organizations or associations would submit completed application forms to the Department containing the above specified information.

Importer organizations and those wishing to submit nominations from States where there are no certifiable organizations would submit such information as required by the Secretary pursuant to the rules proposed herein.

The Secretary would have the authority to require verification of any information submitted to determine the eligibility to nominate persons for membership on the Board.

Information obtained by the Secretary would be kept confidential, except that the Secretary could release general statements based upon data obtained from a number of organizations. The Secretary would not disclose the information obtained from any specific organization or person.

The Paperwork Reduction Act of 1980 (Title 44, U.S.C. Chapter 35) seeks to minimize the paperwork burden imposed by the Federal Government while maximizing the utility of the information requested. In March 1983, the Office of Management and Budget (OMB) implemented the Act by adopting procedures contained in Part 1320 of 5 CFR Chapter III. In accordance with these procedures, the information collection request contained in this subpart has been approved by OMB and has been assigned OMB Control No. 0581–0152.

Because of the need for expedited handling, it is found to be impractical, unnecessary, and contrary to the public interest to provide a comment period which is longer than 15 days.

The numbers of each section under this proposed subpart have been assigned to facilitate the publication of the proposed rule. Consequently, these sections may be revised and/or renumbered in the final rule.

List of Subjects in 7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef and beef products.

Chapter XI of Title 7 of the Code of Federal Regulations is proposed to be amended by revising Part 1260 to read as follows:

PART 1260—BEEF PROMOTION AND RESEARCH

Subpart A—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

Sec.

Authority: 7. U.S.C. 2901–2918

Subpart A—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

§ 1260.500 General.

State organizations or associations shall be certified by the Secretary as provided for in the Beef Promotion and Research Act of 1985 to be eligible to make nominations of cattle producers to the Board. Additionally, where there is no eligible organization or association in a State, the Secretary may provide for nominations in the manner prescribed in this subpart. Organizations or associations determined by the Secretary to represent importers of cattle, beef, and beef products may submit nominations for membership on the Board in a manner prescribed by the Secretary in this subpart. The number of nominees rquired for each allotted position will be determined by the Secretary.

§ 1260.510 Definitions.

As used in this subpart:

"Act" means the Beef Promotion and Research Act of 1985, 7 U.S.C. 2901–2918.

"Beef" means the flesh of cattle.

"Beef products" means edible products produced in whole or in part from beef, exclusive of milk and milk products produced therefrom.

"Board" means the Cattlemen's Beef Promotion and Research Board established under section 5(1).

"Cattle" means live, domesticated bovine animals regardless of age.

"Department" means the United States Department of Agriculture.

"Importer" means a person who imports cattle beef, or beef products from outside the United States.

"Livestock and Seed Division" means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

"Producer" means a person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to

whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

"State" means each of the 50 States.

"Unit" means a State or combination of States which has a total inventory of not less than 500,000 head of cattle.

§ 1260.520 Responsibility for administration of regulations.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1260.530 Certification of eligibility.

(a) *State organizations or associations: requirements for certification.*

(1) To be eligible for certification to nominate producer members to the Board, State organizations or associations must meet all of the following criteria:

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(2) Written evidence of compliance with the certification criteria shall be contained in a factual report submitted to the Secretary by all applicant State organizations or associations.

(3) The primary consideration in determining the eligibility of a State organization or association shall be based on the criteria set forth in this section. However, the Secretary may consider any additional information that the Secretary deems relevant and appropriate.

(4) The Secretary shall certify any State organization or association which he determines complies with the criteria in this section, and his eligibility determination shall be final.

(b) *Organizations or associations representing importers.* The determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (i.e., beef, cattle, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1260.540 Application for certification.

(a) *State organization or associations.* Any State organization or association which meets the eligibility criteria specified in § 1260.530(a) for certification is entitled to apply to the Secretary for such certification of eligibility to nominate producers for appointment to the Board. To apply, such organization or association must submit a completed "Application for Certification of Organization or Association," Form LS–25. Copies may be obtained from the Livestock and Seed Division; Agricultural Marketing Service, USDA; 15th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650.)

(b) *Importer organizations or associations.* Any organization or association whose members import cattle, beef, or beef products into the United States may apply to the Secretary for determination of eligibility to nominate importers under the Act. Applications shall be in writing and shall contain the information required by § 1260.530. Interested organizations or associations may contact the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250; (Telephone: 202/447–2650) for information concerning application procedures.

§ 1260.550 Verification of information.

The Secretary may require verification of the information to determine eligibility for certification to make nominations under the Act.

§ 1260.560 Review of certification.

The Secretary may terminate or suspend certification or eligibility of an organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization or association may remain certified or eligible to make nominations.

§ 1260.570 Notification of certification and the listing of certified organizations.

Organizations and associations shall be notified in writing as to whether they are eligible to nominate producer members to the Board. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations and associations. Copies shall also be maintained on file in the Livestock and Seed Division office, where they will be available for inspection.

§ 1260.580 Nomination of producers for appointment to the initial Board.

Nominations to the initial Board shall be made in the following manner:

(a) When notifying a State organization or association that it has been certified, the Secretary shall concurrently advise the organization or association of the number of positions on the Board allotted to that organization's or association's respective State. The Secretary also shall request the names of the certified organization's or association's nominees for each allotted position.

(b) When more than one State organization or association in a State or unit is certified, the Secretary shall provide each such certified State organization or association with a list of all other certified State organizations or associations in the same State or unit.

(c) If there is more than one certified State organization or association within a State or unit, such State organizations and associations may jointly nominate producers for each allotted position on the Board.

(d) Nominations shall be submitted by certified State organizations or associations pursuant to this section.

(e) If the Secretary determines that there is no eligible organization or association in a State which can be certified pursuant to paragraph § 1260.530, the Secretary may obtain nominations from one or more of the following: (1) Other related organizations, (2) State Department of Agriculture, and (3) individuals determined by the Secretary to be knowledgeable about the beef industry in such State.

§ 1260.590 Nomination of importers for appointment to the initial Board.

(a) The Secretary shall notify in writing applicant importer organizations or associations of their eligibility to nominate importer members to the Board and advise them of the allotted number of importer positions on the Board. Eligible organizations or

associations may nominate members for each position allotted to importers.

(b) The Secretary shall provide importer organizations or associations with the names of all other eligible importer organizations.

(c) If there are two or more eligible importer organizations or associations, they may jointly nominate importers for each allotted position on the Board.

§ 1260.600 Determining allotted positions on the Board.

(a) *Producers.* The number of positions on the initial Board shall be determined by the Secretary in accordance with the provisions of the Act. For purposes of determining and allocating producers positions on the initial Board, the United States shall be divided into geographical areas, called units.

The number of allotted positions for producers on the initial Board for each unit shall be 1 position for the first 500,000 head of cattle and 1 additional position for each additional 1,000,000 head of cattle. The number of cattle for each State or unit shall be obtained from the most recent January 1 cattle inventory published in the Statistical Reporting Service's report on cattle numbers. (Copies of the applicable report can be obtained by contacting the Crop Reporting Board Publications; Room 5829–S.; USDA; Washington, DC 20250. Telephone: 202/447–4021.)

(b) *Importers.* For the purpose of determining and allocating the number of importer positions on the initial Board, importers shall be considered as a single unit. The number of allotted positions shall be based on 1 member for each 500,000 head of cattle imported and 1 additional member for each additional 1,000,000 head imported. Imported beef and beef products will be converted to live animal equivalencies and included in the total number of head of imported cattle in the unit. The Secretary shall use the most recent compilation of official import data available to determine the number of positions allotted to importers.

§ 1260.610 Acceptance of appointment.

Producers and importers nominated to the Board must signify in writing their intent to serve if appointed.

§ 1260.620 Confidential treatment of information.

All documents and information submitted to or obtained by the Department shall be kept confidential by all employees of the Department, except that the Secretary may issue general statements based upon the information collected from a number of different sources. These general statements will not identify any information as having been furnished by any one source.

§ 1260.630 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581–152 has been assigned.

Signed at Washington DC: February 18, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs

[FR Doc. 86–3836 Filed 2–20–86; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 505a

[No. 86–89]

Privacy Act of 1974; New System of Records

Dated: February 3, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 ("Privacy Act") (5 U.S.C. 552a), the Federal Home Loan Bank Board ("Board") is proposing to establish a new system of records, to exempt a proposed system of records which will contain information concerning enforcement actions, crimes, and suspected crimes, and is further proposing to exempt the system, if adopted, from meeting certain requirements of the Privacy Act.

DATE: Comments must be received by March 24, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377–6434, or Rosemary Stewart, Director, Office of Enforcement, 377–6437 at the above address.

SUPPLEMENTARY INFORMATION: In order to collect information concerning individuals who are the subject of enforcement actions or have violated or are suspected of violating criminal laws in connection with financial institutions, the Board issued a notice of a proposed new system of records entitled "Confidential Individual Information System," as required by the Privacy Act appearing in the Notice Section in this **Federal Register.**

The Privacy Act provides that the head of an agency may promulgate rules exempting any system of records within the agency from various provisions of that Act, among which is the requirement to make the records available to individuals to which they pertain, if the system of records contains "investigatory material compiled for law enforcement purposes," provided that the agency includes in the rules it adopts the reason why the system of records qualifies for exemption under 12 U.S.C. 552a(k).

As discussed at greater length in the rule itself, failure to obtain exemption from certain specific requirements of the Privacy Act would interfere with investigations and enforcement proceedings by endangering confidentiality and disclosing investigative techniques and procedures, and would invade the privacy of persons identified in the records.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1166 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Reasons, objectives, and legal basis underlying the proposed rule.* These elements are incorporated in the supplementary information regarding the proposal and in the proposed rule itself.

2. *Small entities to which the proposed rule would apply.* The proposed rule would govern agency internal procedures and does not require any actions by small entities. However, the proposed system would contain information concerning persons associated with both small and large institutions.

3. *Impact of the proposed rule on small institutions.* The proposed rule would govern agency internal procedures and does not require any actions by small institutions. However, the rule would benefit small institutions by increasing the ability of the Board to determine the character of potential acquirers of those institutions, and to bring enforcement actions or make criminal referrals against persons who have violated laws, rules or regulations or participated in unsafe or unsound practices.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposal.

5. *Alternatives to the proposed rule.* The only alternative to the proposed rule would be not to establish the system of records, or not to exempt the system of records from certain provisions of the Privacy Act. Such an alternative would impede the gathering of material for law enforcement purposes, as described in the proposed rule. Moreover, because the rule does not require action by small entities, the alternative would not lessen any burden on them.

The Board seeks comments on all aspects of this proposal. However, because the proposal is a matter of internal agency procedure and because the Board believes that the information is critical to the performance of its enforcement and examination functions, the Board has limited the public comment period to 30 days.

List of Subjects in 12 CFR Part 505a

Privacy.

Accordingly, the Board hereby proposes to amend Part 505a, Subchapter A, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

Subchapter A—General

PART 505A—RECORDS MAINTAINED ON INDIVIDUALS

1. The authority citation for Part 505a is revised to read as follows:

Authority: 5 U.S.C. 552a; 12 U.S.C. 1437, 1464, 1725; Reorg. Plan No. 3 of 1947, 3 CFR, 1943–1948 Comp., p. 1071.

2. Add new § 505a.13 to read as follows:

§ 505a.13 Exemptions of records containing investigatory material compiled for law enforcement purposes.

(a) *Scope.* The Board has established a new system of records, entitled the "Confidential Individual Information System." The purpose of this system is to assist the Board in the accomplishment of its statutory and regulatory responsibilities in connection with the supervision of financial institutions. This system will be exempt from certain provisions of the Privacy Act of 1974 for the reasons set forth in paragraph (c) of this section.

(b) *Exemptions Under 5 U.S.C. 552a(k)(2).* (1) Under 5 U.S.C. 552a(k)(2), the head of an agency may issue rules to exempt any system of records within the agency from certain provisions of the Privacy Act of 1974 if the system contains investigatory material compiled for law enforcement purposes.

(2) Provisions of the Privacy Act of 1974 from which exemptions will be made under 5 U.S.C. 552a(k)(2) are as follows:

(i) 5 U.S.C. 552a(c)(3);

(ii) 5 U.S.C. 552a(d) (1), (2), and (4);

(iii) 5 U.S.C. 552a(e)(1);

(iv) 5 U.S.C. 552a(e)(4) (G), (H), and (I); and

(v) 5 U.S.C. 552a(f).

(c) *Reasons for exemptions under 5 U.S.C. 552a(k)(2).* (1) 5 U.S.C. 552a(c)(3) requires that an agency make accountings of disclosures of records available to individuals named in the records at their request. These accountings must state the date, nature, and purpose of each disclosure of the record and the name and address of the recipient. The application of this provision would make known to subjects of an investigation that an investigation is taking place and that they are the subjects of it. Release of such information could result in the alteration or destruction of documentary evidence, improper influencing of witnesses, and reluctance of witnesses to offer information, and could otherwise impede or compromise an investigation.

(2) 5 U.S.C. 552a (c)(4), (d) (1), (2), (3), and (4), (e)(4) (G) and (H), and (f), relate to an individual's right to be notified of the existence of, and the right to examine, records pertaining to such individual. Notifying an individual at the individual's request of the existence of records and allowing the individual to examine an investigative file pertaining to such individual, or granting access to an investigative file, could: (i) Interfere with investigations and enforcement proceedings; (ii) constitute an unwarranted invasion of the personal privacy of others; (iii) disclose the identity of confidential sources and reveal confidential information supplied by those sources; or (iv) disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(4)(I) requires the publication of the categories of sources of records in each system. Application of this provision could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality, thus compromising the agency's ability to conduct investigations and to identify, detect, and apprehend violators.

(4) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only information about an individual that is relevant and necessary to accomplish a purpose of the agency required by statute or Executive Order. Limiting the system as described would impede enforcement activities because:

(i) It is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation; and

(ii) In any investigation the Board may obtain information concerning violations of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the Board should retain this information to aid in establishing patterns of criminal activity, and to provide leads for those law enforcement agencies charged with enforcing criminal or civil laws.

(d) *Documents exempted.* Exemptions will be applied only when appropriate under 5 U.S.C. 552a(k).

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86–3817 Filed 2–20–86; 8:45 am]

BILLING CODE 6720-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 148

Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to its rules governing the Implementation of the Equal Access to Justice Act in Covered Adjudicatory Proceedings Before the Commission. These amendments are being proposed to conform the rules to the Equal Access to Justice Act, as recently amended by the Equal Access to Justice Act Amendments, and to make certain minor clarifying changes.

DATES: Comments may be filed on or before March 24, 1986.

ADDRESS: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581.

FOR FURTHER INFORMATION CONTACT: James T. Kelly, Assistant Chief, Opinions Section, Office of General Counsel, Commodity Futures Trading Commission, at the address above. Telephone (202) 254–7110.

SUPPLEMENTARY INFORMATION: Shortly after the Equal Access to Justice ("EAJ") Act, Pub. L. No. 96–481, 94 Stat. 2325, 5 U.S.C. 504 and 28 U.S.C. 2412, took effect on October 1, 1981, the Commission published procedural rules to govern the processing of EAJ Act fee applications.

See 46 FR 57669 (Nov. 25, 1981), reprinted in [1980–1982 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶21,283 and codified at 17 CFR Part 148. In doing so, the Commission adopted model rules recommended by the Administrative Conference of the United States, making certain minor additions, deletions, or substitutions as necessary to reflect existing Commission practice and procedures. The EAJ Act, which was designed as a three year experiment, expired on September 30, 1984, and Congressional efforts to reenact and revise it were the subject of a Presidential veto in November 1984.

On August 5, 1985, President Reagan signed into law a permanent reauthorization and revision of the Equal Access to Justice Act, Pub. L. No. 99–80, 99 Stat. 183. The new law makes clarifying technical and substantive amendments to the original legislation. Accordingly, these recent statutory changes necessitate corresponding revisions to the Commission's implementing regulations.

The statutory changes enacted by Pub. L. No. 99–80 apply to adjudicatory proceedings pending on or commenced after August 5, 1985, the date the EAJ Act amendments became law. The former statute applies to adjudicatory proceedings completed prior to October 1, 1984, the expiration date of the former EAJ Act. The Commission is not aware of any covered adjudicatory proceedings that were commenced on or after October 1, 1984, and finally disposed of before August 5, 1985. The amendments to Part 148 proposed in this Federal Register notice shall apply to EAJ Act applications filed on or after the effective date of the amendments. The former regulations in Part 148 shall apply to EAJ Act applications filed before the effective date of the amendments. Except to the extent that the approach in proposed § 148.2 (effective date) would preserve the old rules for cases filed before the EAJA amendments, the Commission's proposals in this Notice are consistent with the revised model rules, as drafted by the Administrative Conference of the United States. *See* 50 FR 46250 (Nov. 6, 1985).

The following discussion will identify those sections of the existing regulations where changes are proposed and will explain the changes.

Subpart A—General Provisions

Section 148.1 Purpose of these rules.

The Commission proposes to amend § 148.1 of the rules by deleting the phrase "in the proceeding" from the second sentence of the existing regulation. This change is necessary to conform the regulation to the revised EAJ Act, which now provides that an agency's position, which must be substantially justified, includes not only its posture in the adversary adjudication, but also the action or failure to act upon which the adversary adjudication is based. The proposed change to § 148.1 is similar to that proposed in § 148.11(a), *infra*.

Section 148.2 When the act applies.

The Commission proposes to amend § 148.2 to clarify that EAJ Act applications may be filed in connection with any covered adjudicatory proceedings pending before the Commission on or after October 1, 1981. This includes proceedings begun before that date, regardless of when they were initiated or when final Commission action occurs. The Commission also proposes to amend § 148.2 to clarify that awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

Section 148.3 Proceedings covered.

The Commission proposes to amend § 148.3(a) of the regulations to revise the definition of covered adjudicatory proceedings to comport with the reenacted EAJ Act. The proposal also makes clear that reparation proceedings under section 14 of the Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under section 8c of the Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Act, 7 U.S.C. 21, are not "adversary adjudications" for purposes of EAJ Act fee claims under the revised 5 U.S.C. 504(a)(1).

Both the expired and reenacted EAJ Act, 5 U.S.C. 504(b)(1)(C), apply only to an "adversary adjudication . . . under section 554 of [Title 5, U.S.C.] in which the position of the United States is represented by counsel or otherwise." As relevant here, 5 U.S.C. 554, which is part of the Administrative Procedure Act, applies to "every case of adjudication required by statute to be determined on the record after opportunity for any agency hearing." [1] This statutory framework does not apply to Commission reparation proceedings or review of self-regulatory organizations' disciplinary, access denial, and membership denial actions.

Through its reparation program, the Commission provides a neutral forum to hear money damage claims by customers against their brokers arising out of commodity transactions.[2] In resolving these disputes between private parties, the Commission acts as a tribunal—it is not "represented by counsel or otherwise." It is not a party to the transaction in dispute, and prior to a claim being filed, has no control over, or knowledge of, the identity, net worth or size of the parties who will appear before it. The parties develop their own record and the Commission's decision on whether a violation of law occurred and damages are appropriate must be made on the basis of that record. Payment of any damages awarded is made by one party to the other. The Commission has no responsibility to pay the award or to enforce the judgment.

In addition, reparation proceedings are not "adversary adjudications" because they are not "required by statute to be determined on the record after opportunity for an agency hearing." 5 U.S.C. 554. The statutory provisions governing reparations have never contained this requirement. Although many reparation cases are commonly held before an Administrative Law Judge in an on-the-record type procedure, Congress has always permitted claims for small damage awards to be resolved by written submissions without a hearing before an Administrative Law Judge. *See* 7 U.S.C. 18(c) (1976). And to provide additional flexibility to the program, Congress in 1982 expressly empowered the Commission to design its reparation procedures without regard to 5 U.S.C. 554 or any other provision of the Administrative Procedure Act. *See* 7 U.S.C. 18(b) (1982) ("notwithstanding any other provision of law," the Commission "may prescribe, or otherwise condition, without limitation . . . all . . . matters governing [reparation] proceedings before the Commission. . . .).[3]

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[1] Agency ratemaking and granting and renewal licensing decisions are specifically excluded from the term agency adjudication.

[2] In promulgating regulations to implement the original EAJ Act, the Commission excluded reparation proceedings from coverage because the Commission was not a party to the proceeding. *See* 17 CFR 148.3(a) (1983). This exclusion was based in part on the fact that the original EAJ act definitional structure applied only to otherwise-covered proceedings where the agency "was a party." While the recent statutory changes are eliminated that definitional criterion, the Commission is convinced that Congress did not intend to broaden the classes of adjudicatory proceedings in which an agency may incur EAJ Act liability. Indeed, when Congress wanted to expand the class of covered proceedings—as it did with agency board of contract appeals proceedings—it did so in explicit statutory language. *See* section 1(c)(2)(B) of Pub. L. No. 99–80.

[3] The EAJ Act prohibits the federal courts from awarding fees against an agency in whose civil

Continued

For similar reasons, the Commission also believes that its review of disciplinary actions, access denials and membership denials taken by futures exchanges and registered futures associations are exempt from EAJ Act coverage. Insofar as 5 U.S.C. 554 is concerned, the Administrative Procedure Act does not apply to exchange disciplinary proceedings or access denials. *See Cardoza* v. *CFTC*, 588 F. Supp. 621, 626 n.5 (N.D. Ill. 1984), *aff'd on other grounds*, 768 F.2d 1542 (7th Cir. 1985); *cf. Schultz* v. *SEC*, 614 F.2d 561, 569 (7th Cir. 1980). Nor does Section 8c of the Commodity Exchange Act require the Commission's review to be "determined on the record". And in reviewing an exchange disciplinary action or access denial, the Commission, as in the case of reparations, is not "represented by counsel or otherwise." Instead the Commission would review the exchange action based on a record developed by and before the exchange. 17 CFR 9.34 and 9.37(a). In these circumstances, as in reparation cases, the Commission sits as a decisionmaker to resolve disputes that have arisen between private parties. The same rationale applies to Commission review of membership denials or disciplinary actions taken by registered futures associations against their members, involving acts or practices in violation of association rules. 7 U.S.C. 21.

The Commission also proposes to amend Section 148.3(b) of the regulations. The original provision, stating that the Commission might designate a specific proceeding as a covered proceeding even though that type of proceeding was not otherwise identified in paragraph (a), was intended to defer particularly difficult decisions about which proceedings were "under 5 U.S.C. 554." However, it could be read to suggest that the Commission has the power to award fees in proceedings that are not explicitly covered by the statute. Accordingly, the Commission proposes to eliminate the ambiguous language, as recommended by the Administrative Conference of the United States.

Section 148.4 Eligibility of applicants.

The Commission is proposing to amend § 148.4(b) to incorporate the expanded net worth thresholds of the revised and reenacted EAJ Act. Individuals with a net worth of $2 million or less and businesses with a net worth of $7 million or less are now eligible applicants under the revised Act. The proposed change to § 148.4(b) parallels that proposed in § 148.11(b), *infra*. In addition, the revised Act adds units of local government to the entities that can receive awards, if they meet the limits on net worth and number of employees. The Commission's proposal reflects this change, as well.

The Commission also proposes to amend Section 148.4(e) of the regulation to make clear that the term "employee" embraces all the agents of an applicant, by whatever title or label they may be known. This is consistent with the principal-agent liability provision of the Commodity Exchange Act, 7 U.S.C. 4, which states that the "act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person." Thus, for example, an EAJ Act applicant registered as a futures commission merchant would have to identify the number of its guaranteed introducing brokers, and the number of persons associated with such introducing brokers, in order to establish its eligibility for a fee award.

Section 148.5 Standards for awards.

The Commission proposes to amend § 148.5(a) by incorporating the provision of Pub. L. No 99–80 that "position of the agency" includes any action or failure to act on which the proceeding is based, in addition to the agency's litigation position. The Commission also proposes to amend § 148.5(a) by deleting the provision that the Commission's position may be found to be substantially justified if it is demonstrated to be "reasonable in fact and law." This change is recommended by the Administrative Conference of the United States as necessary to conform the regulation to the Congressional directive concerning substantial justification. *See* H.R. Rept. No. 120, 99th Cong., 1st Sess. at 9 and n.15 and *Russell* v. *National Mediation Board*, 775 F.2d 1284, 1288–89 (5th Cir. 1985). The Commission notes that substantial justification is a different and lesser standard than substantial evidence. *See* 131 Cong. Rec. H 4763 (June 24, 1985) (remarks of Cong. Kindness and Moorhead) (disavowing certain language in the Judiciary Committee's report). *See also* 21 Weekly Compilation of Presidential Documents 966, 967 (Aug. 5, 1985) (remarks of President Reagan to the same effect). As intended by Congress, the decision of whether agency action was or was not substantially justified will continue to be made on a case-by-case basis.

Subpart B—Information Required From Applicants

Section 148.11 Contents of application.

The Commission is proposing to amend §148.11(a) by deleting the phrase "in the adjudicatory proceeding" from the second sentence of the existing regulation. This change is designed to conform the regulation to the revised EAJ Act, which now provides that an agency's position, which must be substantially justified, includes not only its posture in the adversary adjudication, but also the underlying action or failure to act which led to the adversary adjudication.

The Commission is also proposing to amend § 148.11(b) to incorporate the expanded net worth thresholds of the revised and reenacted EAJ Act. Individuals with a net worth of $2 million or less and businesses with a net worth of $7 million or less are eligible applicants under the revised Act. The proposed change to § 148.11(b) is identical to that proposed in § 148.4(b)(1) and (2), *supra*.

Subpart C—Procedures for Considering Applications

Section 148.26 Further proceedings.

The Commission proposes to amend § 148.26(a) of the rules to bar discovery and/or evidentiary proceedings into the question of whether the government's position was substantially justified. This discovery limitation was designed by the Congress to respond to concerns raised by the President's veto of earlier EAJ Act Amendment legislation. *See* H.R. Rept. 99–120, 99th Cong., 1st Sess. at 13 (1985) ("the 'substantial justification determination' will not involve additional evidentiary proceedings or additional discovery of agency files, solely for EAJA purposes."); 131 Cong. Rec. S. 9992 (July 24, 1985) (remarks of Senator Grassley) (". . . this bill responds to the President's stated objections about unbridled discovery of the agency deliberative process . . . No 'fishing expeditions' will be allowed, so as to turn the fees case into a second major litigation."); and 131 Cong. Rec. H 4762 (June 24, 1985) remarks of Cong. Kastenmeier) ("The bill would limit the determination of whether the position of the United States was substantially justified to the record . . . which is made in the adversary adjudication . . .

cases "sounding in tort." 28 U.S.C. 2412(d)(1)(A). Since reparation proceedings regularly involve allegations of fraud (a tort at common law), the Commission believes that such cases should be categorically excluded from fee awards, both at the administrative level and on judicial review.

for which fees and other expenses are sought. The effect of this amendment, which is designed to respond to concerns raised by the President's veto message, will be to limit discovery in EAJA fee proceedings.") *See also* 21 Weekly Compilation of Presidential Documents 966, 967 (Aug. 5 1985) (Statement of President Reagan) (". . . the bill strictly limits . . . the agency's fee inquiry to the agency action that is at issue in the . . . proceeding and does not permit the examination of any other agency conduct . . . . the Congress has specifically instructed . . . (parties) . . . not to engage in additional discovery or evidentiary proceedings in considering the question of substantial justification . . . It is with these understandings that I sign this bill.")

Section 148.28 Commission review.

The Commission proposes to modify the rule by which parties can obtain Commission review of initial decisions on fee applications. Instead of the existing two-step discretionary review procedure, the Commission proposes to adopt a one-step appeal-of-right procedure. Under this proposal, an aggrieved party would have a right to appeal an initial decision to the Commission by filing a notice of appeal within fifteen days after service of an initial decision. The notice of appeal need only contain a very brief expression of the appealing party's intention to appeal the initial decision. After timely filing the notice of appeal, the party would have thirty days to perfect the appeal by filing an appeal brief identifying the issues to be raised for Commission consideration. The opposing party would have thirty days to respond. The timely filing and timely perfecting of an administrative appeal to the Commission would be a mandatory prerequisite to judicial review of a final decision, and the failure timely to file and perfect will subject an appeal to dismissal.

This change in the appellate review rule will bring the Commission's Part 148 rules into harmony with its existing appeal procedures in Parts 10 and 12 of this Chapter. It will be more efficient and expeditious because it will spare the Commission from having to consider an application for review, followed by, if review is granted, a brief in support of the application for review. Under the proposed procedure, the Commission would only have to consider a matter once.

After the appellate briefing is completed, the Commission will issue a final decision or will remand the fee application to the Presiding Officer for further action.

The Commission notes that the provisions of the Regulatory Flexibility Act do not apply to these rule modifications. The rules are procedural in nature and have a potential beneficial, rather than adverse, impact on small businesses. Accordingly, the Chairman, on behalf of the Commission, certifies that the rules proposed in this notice, if adopted, will not have a significant economic impact on a substantial number of small entities. Moreover, the provisions of the Paperwork Reduction Act do not apply to these rule modifications. The rules do not call for the collection of information from the general public by the Commission, but simply implement statutory changes in the context of particular ongoing adjudicatory proceedings. Notwithstanding these proposed determinations, the Commission welcomes comments on these matters.

List of Subjects in 17 CFR Part 148

Claims, Equal access to justice, Lawyers.

The Commission proposes to amend Part 148 of Chapter I of Title 17 of the Code of Federal Regulations, as specified below:

The authority citation for 17 CFR Part 148 would be revised to read as follows:

Authority: Equal Access to Justice Act, 5 U.S.C. 504(c)(1), and in sections 2(a)(11) and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 4a(j) and 12a(5).

Subpart A—General Provisions

Section 148.1 is proposed to be revised as follows:

§ 148.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in the part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are prevailing private parties in adjudicatory proceedings before the Commission. An eligible party may receive an award when it prevails over the Commission, unless the Commission's position was substantially justified or special circumstances make an award unjust. The rules in this Part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

Section 148.2 is proposed to be revised as follows:

§ 148.2 When the Act applies.

The Act applies to any covered adjudicatory proceeding pending before the Commission on or after October 1, 1981. This includes proceedings begun before October 1, 1981, if final Commission action has not been taken before that date. Awards may be sought for fees and other expenses incurred before October 1, 1981, in any such covered proceeding.

Section 148.3, paragraphs (a) and (b), are proposed to be revised as follows:

§ 148.3 Proceedings covered.

(a) The Act applies to adjudicatory proceedings conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Reparation proceedings under section 14 of the Commodity Exchange Act, 7 U.S.C. 18, Commission review of exchange disciplinary and access denial actions under Section 8c of the Commodity Exchange Act, 7 U.S.C. 12c, and registered futures association disciplinary and membership denial actions under section 17 of the Commodity Exchange Act, 7 U.S.C. 21, are not covered by the Act. Proceedings brought to determine whether or not to grant or renew registrations pursuant to sections 8a or 17(*o*) of the Commodity Exchange Act, 7 U.S.C. 12a and 21(*o*), or contract market designations pursuant to section 6 of the Commodity Exchange Act, 7 U.S.C. 8, are excluded, but proceedings brought to suspend or revoke registrations or contract market designations are covered if they are otherwise adjudicatory proceedings. For the Commission, the types of proceedings generally covered are adjudicatory proceedings as defined in § 10.2(b) of this Chapter; Part 14 proceedings, if they involve a hearing, are also covered.

(b) The Commission's decision not to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in the proceedings on the application.

* * * * *

Section 148.4, paragraph (b)(1)(2), and (5), and (e), are proposed to be revised as follows:

§ 148.4 Eligibility of applicants.

(a) * * *

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) * * *

(4) * * *

(5) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(c) * * *

(d) * * *

(e) The employees of an applicant include all persons who regularly perform services for compensation for the applicant, under the applicant's direction and control. The term "employee" also embraces all the agents of an applicant, by whatever title or label they may be known, for whose acts or omissions the applicant may be held liable under the Commodity Exchange Act. *See* 7 U.S.C. 4. Part-time employees shall be included on a proportional basis.

(f) * * *

(g) * * *

Section 148.5, paragraph (a), is proposed to be revised as follows:

§ 148.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adjudicatory proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Commission was substantially justified. The position of the Commission includes, in addition to the position taken by the Commission in the adversary adjudication, the action or failure to act by the Commission upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission.

(b) * * *

* * * * *

Subpart B—Information Required From Applicants

Section 148.11, paragraph (a) and the introductory text of paragraph (b), are proposed to be revised as follows:

§ 148.11 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adjudicatory proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission or other agency that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) * * *

(2) * * *

(c) * * *

(d) * * *

(e) * * *

* * * * *

Subpart C—Procedures for Considering Applications

* * * * *

Section 148.26, paragraph (a), is proposed to be revised as follows:

§ 148.26 Further Proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or counsel for the Commission or for another relevant agency, or on his or her own initiative, the Presiding Officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the Commission was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought. No discovery and/or evidentiary proceedings shall be permitted into the question of whether the agency's position was substantially justified.

(b) * * *

* * * * *

Section 148.28 is proposed to be revised as follows:

§ 148.28 Appeal to the Commission.

(a) Either the applicant or counsel for the Commission or for another relevant agency may appeal the initial decision on the fee application by complying with the requirements of this section. An appealing party shall serve upon opposing parties and shall file with the Proceedings Clerk a notice of appeal within fifteen (15) days after service of the initial decision. The notice need consist only of a brief statement indicating the filing party's intent to appeal the initial decisions, and shall include the date upon which the initial decision was rendered, the name of the proceeding, and the docket number of the proceeding. The failure of a party timely to file and serve a notice of appeal in accordance with this paragraph, or to perfect the appeal in accordance with paragraph (b) of this section, shall constitute a voluntary waiver of any objection to the initial decision, and of all further administrative or judicial review under these rules and the Equal Access to Justice Act.

(b) An appeal shall be perfected by the appealing party by timely filing with the Proceedings Clerk an appeal brief which meets the requirements of paragraphs (b) and (d) of this section. An original and one copy of the appeal brief shall be filed within thirty (30) days after filing of the notice of appeal. By motion of the appealing party, the Commission may, for good cause shown, extend the time for filing the appeal brief. If the appeal brief is not filed within the time prescribed in this subparagraph, the Commission may, upon its own motion or upon motion by a party, dismiss the appeal, in which event the initial decision shall become the final decision and order of the Commission, effective upon service of the order of dismissal.

(c) The opposing party may, within thirty (30) days after service of the appeal brief, file an original and one copy of an answering brief, and serve one copy thereof, unless the time limit is extended by the Commission upon motion of the party and for good cause shown.

(d) Parties filing an appeal brief or answering brief shall meet the requirements of § 10.12 of this Chapter as to form. The content of briefs shall satisfy the requirements of § 10.102(d) of this Chapter, except that any party, with leave of the Commission, may file an informal document in lieu of a brief. No brief shall exceed thirty-five (35) pages in length without advance leave of the Commission.

(e) On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived.

Dated: February 14, 1986.

* * * * *

Jean A. Webb,

Secretary to the Commission Commodity Futures Trading Commission.

[FR Doc. 86-3722 Filed 2-20-86; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 202, 230, 240, 250, 260, 270, and 275

[Release Nos. 33-6625; 34-22903; 35-24017; 39-1077; IC-14936; IA-1012; File No. S7-6-86]

Remittance of Fees to Lockbox

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to a temporary rule that currently permits filers to remit filing and other fees to a United States Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. The amendments would change the provisions of the rule from permissive to mandatory and at the same time permit fees to be remitted to a second designated depository located in Los Angeles, California. In addition, to increase its visibility, the rule would be redesignated as a rule under the Securities Act of 1933. The proposed amendments respond to the efforts of the U.S. Treasury Department to reform its cash management in accordance with the Deficit Reduction Act of 1984, and will put the Commission in compliance with a new Treasury Department regulation,[1] effective October 3, 1985, promulgated under authority of that Act. The Treasury regulation, designed to increase the efficiency of collection of monies owed to Federal agencies, imposes heavy administrative burdens on those agencies. One important requirement under the regulation is that agencies must achieve same-day or next-day deposit of monies. An agency that fails to implement improved methods of cash management may have charges assessed against it by the Treasury. The payment of fees to the lockbox will provide the U.S. Treasury with funds on the date of receipt rather than later, as may be the case with current procedures, resulting in substantial cost savings for the Commission and the Federal Government.

Adoption of the proposed amendment will enable the Commission to comply with the Treasury regulation without increasing its staff. Moreover, the additional demands imposed by the regulation, given current staffing levels, would result in the Commission being unable to process filings within acceptable time frames in peak filing seasons. The Commission, therefore, is proposing mandatory use of a lockbox, which will ensure that the Commission meets its obligations.

In a related release, the Commission has extended for nine months the effectiveness of a temporary rule adopted in June 1984, which permits the submission of filing and other fees to the Commission's lockbox. This action will permit the continuation of current procedures pending adoption of the proposed amendments.

This proposed amendment involves a procedural rule and, under the Administrative Procedure Act, may be adopted without notice and comment. However, because the Commission is changing longstanding practices concerning fee collection, the Commission is inviting comments on the proposal.

DATE: Comments should be received on or before April 14, 1986.

ADDRESSES: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Comment letters should refer to File No. S7-6-86. All comments received will be available for public inspection and copying in the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Kathleen A. Jackson, Special Counsel (202-272-2700), Office of the Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Since August 1984, the Commission has offered filers the option of remitting fees via mail or wire transfer to a U.S. Treasury Department designated lockbox. The lockbox has been available for receipt of accounts receivable payments since August 1, 1984 and for filing fees since August 15, 1984. Participants in the pilot phase of the Commission's Edgar project who make direct electronic submissions have been required to use the lockbox.

When temporary rule 202.3a (17 CFR 202.3a) was proposed, the Commission stated that in approximately twelve months it would consider whether to make payment of fees to the lockbox mandatory. Since that time, the lockbox system has worked well overall. Moreover, strong direction from Congress that federal agencies should be more efficient in their handling of receipts supports the adoption of a mandatory rule. Therefore, the Commission is proposing amendments to rule 202.3a which change its character from permissive to mandatory.

The Commission also has extended the effectiveness of temporary rule 202.3a for a period of 9 months (to November 1, 1986) to permit consideration of the proposed changes. Release No. 33-6623, January 30, 1986 (51 FR 4160, February 3, 1986).

Comments Received on Temporary Rule 202.3a

At the time temporary rule 202.3a was proposed, the Commission solicited comments on whether it should adopt a rule mandating use of a lockbox or other depository arrangement for all fee payments. Three comment letters were received. Two commentators suggested that the Commission consider allowing personal checks for filings under the Securities Act of 1933. However, the Securities Act of 1933 specifies that registration fees must be in the form of a United States postal money order, a certified bank check or cash, *i.e.*, money guaranteed at the time of filing. The Commission does not believe it has the authority, absent statutory change, to allow personal checks for filings under that Act.

Two commentators expressed concern over the possibility of lengthened time to verify receipt of payments and delays in processing critical filings. The Commission is aware of these concerns and has developed procedures with the Treasury Department and the current lockbox to eliminate technical problems associated with this arrangement. For example, the Commission can now verify receipt of payments almost instantaneously with arrival at the lockbox. The commentators also requested that messenger delivery and delivery of cash to the lockbox be permitted. Under the proposed amendments both methods will be acceptable as long as such deliveries are made only to the lockbox located in Pittsburgh, Pennsylvania and proper indentifying data accompanies payments.

Finally, two commentators expressed concern that mandatory use of the lockbox will double delivery requirements and increase associated expenses. The Commission believes that duplicate delivery charges can be

[1] Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund, 50 FR 35547 (1985) (to be codified at 31 CFR Part 206).

avoided, as well as any potential delay of critical filings, if fee payments are submitted or mailed in sufficient time to be received before or simultaneously with the filing. While preparation of filings may prevent their submission until the last possible moment before a deadline, the same is not necessarily true of fees, which generally can be mailed or delivered in advance. The Commission is aware that in some circumstances it may be more costly to send a fee payment in advance of the filing. However, such a procedure may be necessary to accommodate the time schedule of filers. While public filings are made available as soon as they are accepted by the Commission, information concerning receipt of payments is not. Thus, there should be no real concern that plans for sensitive filings will be prematurely exposed.

Current SEC Regulations Affected by the Proposed Amendments

The Commission is proposing to require that filing and other fees be remitted to the lockbox depository beginning approximately October, 1986.[2] If the proposed amendments are adopted, payment of fees required by the following current rules would be required to comply with the amended procedures: Rule 111 under the Securities Act of 1933, rule 0–9 under the Securities Exchange Act of 1934, rule 107 under the Public Utility Holding Company Act of 1935, rule 0–8 under the Investment Company Act of 1940 and rule 203–3(b) under the Investment Advisers Act of 1940.[3] To increase the visibility of the new mandatory procedures, the Commission is proposing to remove these procedures from rule 202.3a, incorporating them instead into the text of rule 111 under the Securities Act. Temporary rule 202.3a would be revised to provide that the payment of fees pursuant to specified rules should be made in accordance with the procedures stated in rule 111. In addition, proposed amendments to rule 0–9 under the Securities Exchange Act, rule 107 under the Public Utility Holding Company Act, rule 0–8 under the Investment Company Act and rule 203–3(b) under the Investment Advisers Act would add a cross reference, in each rule, to rule 111.

The Commission also is proposing conforming amendments to rules 255 and 455 [4] under the Securities Act. Rule 255, which now requires fees for offering statements under Regulation A to be paid at the Regional Offices where the filing is made would require such fees to be paid in accordance with rule 111, as amended. The proposed amendment to rule 455, which relates to Form S–18 under the Securities Act of 1933 and offers registrants the option of filing either at the Commission's principal office or at any of its regional offices, would require fees to be paid in accordance with amended rule 111 regardless of where Form S–18 is filed. Further, a proposed amendment to rule 7a–3 [5] under the Trust Indenture Act of 1939 would add a new section (d) to direct that payment of fees pursuant to section 307(d) of that Act be made in accordance with rule 111. The Commission has not previously promulgated procedural rules for payment of fees under the Trust Indenture Act.

Proposed Procedures

Under the proposed amendments, filers would be required to transmit fees to a Treasury Department designated lockbox depository in either Pittsburgh, Pennsylvania or Los Angeles, California. Filers that chose to transmit fees to the Pennsylvania lockbox would be able to use any of three methods: Mail, wire transfer, or hand delivery. Fees transmitted to the California depository would be accepted only if sent via wire transfer. Filers would continue to send or deliver filings to the Commission at its headquarters or regional offices, as appropriate.

Payments in the form of money order, certified check, cashier's check, cash, wire transfer or, in certain limited cases, personal check, will be considered received by the Commission at the time of their receipt by the lockbox depository. The Commission will verify receipt of fees through direct computer access to both the Pennsylvania and California facilities.[6] Deposits of personal checks will continue to be an unacceptable method of fee payment under the Securities Act of 1933 and section 307(a) of the Trust Indenture Act of 1939.

Request for Comments

In addition to its general request for comments on the proposed amendments, the Commission is requesting specific comment on three matters. First, as amended, paragraph (b)(2) of rule 111 would permit wire transfer of funds for all filings, including those under section 6(c) of the Securities Act of 1933 and section 24(e) of the Investment Company Act. The Commission believes that wire transfers are the functional equivalent of cash, but is requesting specific comment on this provision of the proposal. Second, the amendments provide that fees may be transmitted to the California depository only in the form of wire transfers and, with the exception of Good Friday,[7] only between the hours of 4:30 and 5:30 p.m. Eastern Time. The Commission is requesting comment on whether it is necessary or desirable for the California depository also to accept fees delivered by hand or mail, or both, and whether the hours during which fees may be transmitted to the California depository should be expanded and, if so, to cover what specific times. Finally, the Commission requests specific comment on any foreseeable practical problems that would be created by adoption of the proposed changes. These problems might involve such matters as variations in the procedures employed by different banks in accepting and handling wire transfers, the priority given to wire transfers of small amounts or the advance submission of fees. All comments must be received no later than April 14, 1986.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that the foregoing amendment to rule 111 relates solely to agency organization, procedure or practice and that advance notice and opportunity for comment are not necessary. Nonetheless, the Commission believes that it is in the public interest to solicit and accept public comments and will do so until April 14, 1986. In addition, the Commission has considered the impact this proposed rule will have on competition, and, pursuant to section 23(a)(2) of the Securities

[2] This proposed amendment will not apply to fees paid by national securities exchanges under section 31 of the Securities Exchange Act that must be wired to the Federal Reserve Bank of New York pursuant to directions issued by the Commission's Office of the Comptroller. In addition, fees paid pursuant to Commission rules 200.80e (17 CFR 200.80e), 200.310 (17 CFR 200.310), 200.508 (17 CFR 200.508) and 203.4 (17 CFR 203.6), will continue to be paid in accordance with the directions in those rules. These rules generally establish charges for records services such as searching and attestation, facsimile copies of documents, public reference copying, subscription services and microfiche copies, Privacy Act and Freedom of Information Act searches, and copies of transcripts.

[3] 17 CFR 230.111, 240.0–9, 250.107, 270.0–8, 275.203–3(b).

[4] 17 CFR 230.255 and 230.455.

[5] 17 CFR 260.7a–3.

[6] If, due to system breakdown or otherwise, Commission staff is unable to verify receipt of the fees, the staff will accept filings subject to verification of the fee payment. The filing date will be the later of the date the fees are actually received at the lockbox, or the date the filing is received at the Commission.

[7] The only day on which Mellon Bank is closed, that is not a federal holiday, is Good Friday. During this day, payments may be made only by wire transfer to Bank of America.

Exchange Act of 1934, finds that any burden on competition imposed by the proposed rule is necessary or appropriate in furtherance of the purposes of that Act.

List of Subjects

17 CFR Part 202

Administrative practice and procedure, Investigations, Securities.

17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

17 CFR Part 250

Accounting, Reporting and recordkeeping requirements, Securities, Utilities.

17 CFR Part 260

Reporting and recordkeeping requirements, Securities, Indentures.

17 CFR Parts 270 and 275

Investment advisers, Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In consideration of the foregoing, Chapter II, Title 17 of the Code of Federal Regulations is proposed to be amended as follows:

PART 202—INFORMAL AND OTHER PROCEDURES

1. The authority citation for Part 202 continues to read as follows:

Authority: 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f.(b) and 77f.(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

2. Section 202.3a is proposed to be revised as follows:

§ 202.3a Instructions for payment of fees.

Payment of fees required by the following rules shall be made according to the directions listed in paragraph (b) of § 230.111: § 230.255(b) (17 CFR 230.255(b)), § 230.455 (17 CFR 230.455), § 240.0–9 (17 CFR 240.0–9), § 250.107 (17 CFR 250.107), § 260.7a–3(d) (17 CFR 260.7a–3(d)), § 270.0–8 (17 CFR 270.0–8) and § 275.203–3(b) (17 CFR 275.203–3(b)).

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation appearing under the center heading "General" continues to read as follows:

Authority: Sections 230.100 to 230.174 issued under section 19, 48 Stat. 85, as amended; 15 U.S.C. 77s, unless otherwise noted.

3a. The authority citation under the center heading "Regulation A—General Exemptions" continues to read as follows:

Sections 230.251 to 230.263 also issued under sections 3 and 19, 48 Stat. 85, as amended; 15 U.S.C. 77c, 77s, unless otherwise noted.

3b. The authority citation for § 230.455 continues to read as follows:

Section 230.455 also issued under sections 6, 7, 8, 10 and 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 306(a)(2) 90 Stat. 57; secs. 3(b), 12, 13, 14, 15(d), 23(a), 48 Stat. 882, 892, 894, 895, 901; secs. 203(a), 1, 3, 8, 49 Stat. 704, 1375, 1377, 1379; sec. 202, 68 Stat. 686; secs. 4, 5, 6(d), 78 Stat. 569, 570–574; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), 1, 2, 3, 4, 5, 84 Stat. 1435, 1497; sec. 105(b), 88 Stat. 1503; sec. 8, 9, 10, 89 Stat. 117, 118, 119; sec. 308(b), 90 Stat. 57; sec. 18, 89 Stat. 155; secs. 202, 203, 204, 91 Stat. 1494, 1498–1500; sec. 20(a), 49 Stat. 833; sec. 319, 53 Stat. 1173; sec. 38, 54 Stat. 841; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 78c(b), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 79t(a), 77sss(a), 80a–37.

4. Section 230.111 is proposed to be amended by designating the existing text paragraph (a) and striking the last sentence thereof and adding paragraph (b) as follows:

§ 230.111 Payment of fees.

* * * * *

(b) Payment of fees required by paragraph (a) of this section and the following rules shall be made according to the directions stated in this part: Section 230.255(b) (17 CFR 230.255(b)), § 230.455 (17 CFR 230.455), § 240.0–9 (17 CFR 240.0–9), § 250.107 (17 CFR 250.107), § 260.7a–3(d) (17 CFR 260.7a–3(d)), § 270.0–8 (17 CFR 270.0–8) and § 275.203–3(b) (17 CFR 275.203–3(b)). All such fees must be transmitted to either a U.S. Treasury designated lockbox, currently in Pittsburgh, Pennsylvania, by mail, wire transfer, or hand delivery or to a U.S. Treasury designated depository currently in Los Angeles, California, by wire transfer. Payments must be made in the form specified in the Commission's rules or by wire transfer, and will be considered received by the Commission at the time of their receipt by the lockbox or depository. For purposes of payment of fees, the term "accompanied," as used in section 6(c) of the Securities Act of 1933, section 24(e) of the Investment Company Act of 1940, and section 307(b) of the Trust Indenture Act of 1939, means submission of the applicable fee to either the lockbox or the depository prior to or simultaneously with submission of the filing to the Commission. The following instructions apply:

(1) *Mail.* Fees transmitted by mail must be addressed to the Securities and Exchange Commission, Post Office Box 36005M, Pittsburg, PA 15251. Checks and money orders are to be made payable to the Securities and Exchange Commission. Checks must contain the following information (data elements) for each individual payment (preferably on the front of the check): Entity name, IRS identification number (domestic issuers), form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific data elements for each filing for which payment is being made if a check covers payment for more than one filing. Each response should be clearly labeled to indicate the data element to which it refers, *e.g.*, "IRS #: 53–0040540." Cash payments and money orders must be accompanied, on a separate sheet of paper, by the same information required for checks.

(2) *Wire.* Payors who wish to wire fee payments to either the lockbox or the depository must contact their respective banks to determine the specific procedures used by that bank for wire transfer of funds. In addition, payors must inform their banks that the wire is to be sent to the Securities and Exchange Commission account at either the Pittsburg, Pennsylvania depository, Mellon Bank, or the Los Angeles, California depository, the Bank of America, and that the Commission is the recipient. The payor's bank also must be advised of the American Bankers Association number and the Securities and Exchange Commission account number at either Mellon or Bank of America. Mellon Bank's American Bankers Association number is *043000261* and its Securities and Exchange Commission Account number is *910–8739.* Bank of America's American Bankers Association number is *1200358* and its Securities and Exchange Commission Account number is *12330–08764.* The wire transfer must contain the following data elements (clearly identified) for each individual payment: entity name, dollar amount, IRS identification number (domestic issuers), form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific data elements for each filing if a wire transfer covers payment for more than one filing. Wire transfers will be accepted at Mellon Bank weekdays from 8:30 a.m. to 4:30 p.m. Eastern Time (exlcuding federal holidays and Good Friday). Wire transfers will be accepted at Bank of America weekdays from 4:30 to 5:30 p.m. Eastern Time (excluding

federal holidays) and from 12:00 to 5:30 p.m. Eastern Time on Good Friday.

(3) *Hand Delivery.* Fees that are hand delivered must be brought to the Mellon Bank, 27th Floor, Three Mellon Bank Center, Fifth Avenue at William Penn Way, Pittsburgh, PA 15259–0003. Hand deliveries will be accepted weekdays from 7:30 a.m. to 4:00 p.m. Eastern Time (excluding federal holidays and Good Friday). All hand deliveries must be in a sealed envelope, with the Commission's lockbox number *360055M* written on the outside. The envelope must contain documentation setting forth the Commission's account number at Mellon Bank *910–8739* and the data elements as set forth below. Checks and money orders are to be made payable to the Securities and Exchange Commission. Checks must contain the following information (data elements) for each individual filing (preferably on the front of the check): Entity name, IRS identification number (domestic issuers), form type, amendment (if applicable), and Commission file number, if known. Filers should include the specific data elements for each filing if a check covers payment for more than one filing. Each response should be clearly labeled to indicate the data elements to which it refers, e.g., "IRS #: 53:0040540." Cash payments and money orders must be accompanied, on a separate sheet of paper, by the same information required for checks.

5. Section 230.255 is proposed to be amended by revising paragraph (b) to read as follows:

§ 230.255 Filing of offering statement.

* * * * *

(b) The offering statement shall be signed by the issuer and each person, other than the issuer, for whose account any of the securities are to be offered. If the offering statement is signed by any person on behalf of any other person, evidence of authority to sign on behalf of such other person shall be filed with the offering statement, except where an officer of the issuer signs on behalf of the issuer. At the time of filing an offering statement, the applicant shall pay to the Commission a fee of $100.00, in accordance with the directions set forth in § 230.111(b) of this chapter, no part of which shall be refunded.

* * * * *

6. Section § 230.455 is proposed to be revised to read as follows:

§ 230.455 Place of filing.

All registration statements and other papers filed with the Commission shall be filed at its principal office, except for statements on Form S–18 (§ 239.28) and except as otherwise provided in Rule 445 (§ 230.445). Registration statements on Form S–18 may be filed with the Commission either at its principal office or at the Commission's regional offices as specified in General Instruction B to Form S–18. Such materials may be filed by delivery to the Commission through the mails or otherwise. All fees shall be paid in accordance with the directions set forth in § 230.111(b) of this chapter.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

7. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 305, 307, 314, 319, 53 Stat. 1154, 1156, 1167, 1173; 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, unless otherwise noted.

8. Section 260.7a–3 is proposed to be amended by revising the section heading and adding paragraph (d), to read as follows:

§ 260.7a–3 Number of copies; filings; signatures, binding; payment of fees.

* * * * *

(d) All payments of fees for applications pursuant to section 307(b) of the Act shall be made in cash, or by U.S. postal money order, certified check, bank cashier's check, or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by the Act shall be made in accordance with the directions set forth in § 230.111(b) of this chapter.

PARTS 240, 250, 270 AND 275—[AMENDED]

9. The authority citation for Part 240 is amended by adding the following citation: (Citation before * * * indicates General Rulemaking Authority):

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w, unless otherwise noted; * * * § 240.0–9 also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended. The Authority citation for Part 250 is amended by adding the following citation (Citation before * * * indicates General Rulemaking Authority):

Authority: Secs. 3, 20, 49 Stat. 810, 833, 15 U.S.C. 79c, 79t, unless otherwise noted; * * * § 250.107 also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

The authority citation for Part 270 is amended by adding the following citation (Citation before * * * indicates General Rulemaking Authority):

Authority: Secs. 38, 40, 54 Stat. 841, 842, 15 U.S.C. 80a–37, unless otherwise noted; * * * § 270.0–8 also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended. The authority citation for Part 275 is amended by adding the following citation (Citation before * * * indicates General Rulemaking Authority):

Authority: Secs. 203, 204, 211, 54 Stat. 850, as amended, 852, as amended, 855, as amended, 15 U.S.C. 80b–3, 80b–4, 80b–11 unless otherwise noted; * * * § 275.203–3(b) also issued under 65 Stat. 290, 31 U.S.C. 483a; 48 Stat. 74, 15 U.S.C. 77f(b) and 77f(c), as amended; 48 Stat. 881, 15 U.S.C. 78ee, as amended.

10. Section 240.0–9, 250.107, 270.0–8 and 275.203–3(b) are proposed to be amended by striking "§ 202.3a" from the last sentence of each section and replacing it with "§ 230.111(b)."

* * * * *

Dated: February 13, 1986.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 86–3698 Filed 2–20–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR–157–84]

Income Taxes; $40 Million Limitation Upon Beneficiaries of Certain Tax-Exempt Bond Issues

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that relate to certain industrial development tax-exempt bonds and to certain beneficiaries of such bond issues. Changes to the applicable tax law were made by the Tax Reform Act of 1984 that generally deny Federal income tax exemption for a small issue of industrial development bonds if any of its test-period beneficiaries is allocated more than $40 million of outstanding industrial development bonds, including its allocated portion of the small issue in question. This provision restricts the amount of small issues of industrial development bonds that may be issued for a beneficiary when that person already benefits from a significant amount of tax-exempt industrial development bonds.

DATES: Written comments must be delivered or mailed by April 22, 1986. These regulations are proposed to be effective after August 20, 1986 in

determining the tax-exempt status of obligations issued after August 20, 1986. However, these regulations would not apply to certain obligations described in section 631(f) of the Tax Reform Act of 1984 and to certain obligations with respect to facilities described in section 631(c)(3) of the Tax Reform Act of 1984. The provisions of § 1.103–10(i)(4)(vi) are generally proposed to be effective after December 31, 1983, in determining the tax-exempt status of obligations issued after December 31, 1983.

ADDRESS: Please mail or deliver comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–157–84), 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of Chief Counsel, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (Telephone: 202–566–3590, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(15) of the Internal Revenue Code of 1954. These proposed amendments provide needed guidance regarding the provisions of section 103(b)(15) concerning the $40 million limitation which were enacted by section 623 of the Tax Reform Act of 1984 (Pub. L. 98–369; 98 Stat. 921).

Explanation of Provisions

The $40 million limitation applicable to small issues of tax-exempt industrial development bonds was enacted in the Tax Reform Act of 1984. This limitation generally denies Federal income tax exemption for a small issue of industrial development bonds if any test-period beneficiary is allocated more than $40 million of outstanding industrial development bonds, including its allocated portion of the issue in question. A person is a "test-period beneficiary" of the bond-financed facility, if he is an owner or a principal user of a facility financed by the issue at any time during the 3-year period after the issue is issued, or after the facility is placed in service, whichever occurs later. A person who is related to a principal user at any time during the test period is also a test-period beneficiary, unless the principal user ceased using the facility before the two persons became related.

These proposed regulations provide guidance on the allocation of the proceeds of an issue of industrial development bonds among test-period beneficiaries. In determining whether the $40 million limitation has been exceeded with respect to a test-period beneficiary, the portions of the outstanding amounts of all industrial development bonds (not just small issues allocable to the beneficiary are aggregated.

Nonapplicability of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12219 and that a regulatory impact analysis therefore is not required.

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

Comments—Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the **Federal Register**.

List of Subjects in 26 CFR Parts 1.61–1—1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Par. 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.103–10(i) also issued under 26 U.S.C. 103(b)(15).

Par. 2. Section 1.103–10 is amended by adding a new paragraph (i) immediately following paragraph (h) therein. The new paragraph reads as follows:

§ 1.103–10 Exemption for certain small issues of industrial development bonds.

* * * * *

(i) *$40 million limitation for beneficiaries of small issues of industrial development bonds*—(1) *General rule.* Section 103(b)(6) and § 1.103–10(a) do not apply to an issue of obligations ("issue in question") if—

(i) The portion of the aggregate authorized face amount of the issue in question allocated to any test-period beneficiary, as defined in paragraph (i)(3) of this section, of the issue, plus

(ii) The portion of the outstanding principal amount of prior bonds, as defined in paragraph (i)(2) of this section, allocated—

(*a*) To the test-period beneficiary described in paragraph (i)(2)(i) of this section, or

(*b*) To a person who at any time during the test period of the issue in question is related to such beneficiary,

exceeds $40 million. If interest on the issue is question would, but for this paragraph and section 103(b)(15), be exempt from Federal income taxation solely because of section 103(b)(6), the issue is treated as an issue of obligations not described in section 103(a) on and after the date of issuance. For purposes of this paragraph (i), the aggregate authorized face amount of the issue in question and the outstanding principal amount of a prior bond shall be determined without regard to section 103(b)(6) (B) or (D) (requiring certain amounts of prior issues or capital expenditures to be taken into account in determining the aggregate face amount of the issue in question or of the prior bond).

(2) *Prior bonds.* For purposes of this paragraph (i), "prior bonds" means prior or simultaneous issues of industrial development bonds described in paragraph (4), (5), or (6) of section 103(b) the interest on which is exempt from tax pursuant to section 103(a), including such bonds issued before January 1, 1984. For purposes of paragraph (i)(1)(ii) of this section, "outstanding principal amount of prior bonds" means the principal amount that is outstanding at the time of issuance of the issue in question, not including the amount to be redeemed from the proceeds of the issue in question. Thus, the outstanding principal amount of prior bonds does not include the portion of the original face amount that has been discharged,

nor does it include any amount to be issued in the future.

(3) *Test-period beneficiary*—(i) *In general.* For purposes of this paragraph (i), a "test-period beneficiary" of the issue in question or of an issue of prior bonds means any person who at any time during the test period for the issue is a principal user, as defined in paragraph (h)(1) of this section, of a facility financed by the proceeds of the issue, including a person who is related to a principal user. For purposes of the preceding sentence, a person shall be treated as related to a principal user only if that person is related to such user within the meaning of section 103(b)(6)(C) and paragraph (e) of this section at any time during the test period, and such user has not ceased to use the facility before the persons became related. See paragraph (h)(2)(iv) if this section for circumstances in which a person will be treated as ceasing to use a facility. A test-period beneficiary does not cease to be a test-period beneficiary if he ceases to use the facility; the portion of the issue allocated to the test-period beneficiary continues to be so allocated until the issue is no longer outstanding.

(ii) *Test period.* The "test period" for an issue means the 3-year period beginning on the later of the date the facility financed by the proceeds of the issue is placed in service or the date of issue of such issue. A facility shall be considered as being placed in service at the time the facility is placed in a condition or state of readiness and availability for a specifically assigned function. If separate facilities are financed by an issue and the facilities are placed in service at different times, there shall be separate test periods for the portions of the issue financing each separate facility. If a single facility (consisting of separately depreciable items of property) is placed in service in stages, then the entire facility will be deemed placed in service when its last portion is placed in service.

(4) *Allocation of issue*—(i) *In general.* The portion of the amount of an issue allocated to a test-period beneficiary is the highest percent of the facility financed by proceeds of the issue that the beneficiary owned or used on a regular basis during the test period. For example, a person that owns the entire facility shall be allocated 100 percent of the issue; a person that leases 90 percent of a facility for two years of the test period and leases 35 percent for the third year shall be allocated 90 percent of the issue.

(ii) *Portion allocable to lessee and output purchaser.* The portion of a facility used by a lessee is generally determined by reference to its fair rental value. The portion of a facility used by a principal output purchaser, as defined in paragraph (h)(1)(iii) of this section, is the highest portion of the facility's total output purchased by such purchaser during any of the three years of the test period.

(iii) *Portion allocable to related person.* The portion of an issue allocable to a person who is a test-period beneficiary because he is related to a principal user is the same portion allocated to such principal user.

(iv) *Double allocation.* The total amount of an issue allocated to test-period beneficiaries may exceed 100 percent of its outstanding face amount, such as when one test-period beneficiary is an owner and another person leases the facility for over a year. However, if a beneficiary is the owner of all or a portion of a facility that is leased to or otherwise used by such beneficiary or by a related person, then the portion of the issue the proceeds of which were used to finance the facility is allocated only once to the beneficiary. For example, if Corporation X owns an undivided 50 percent of a facility while related Corporation Y is the lessee of 60 percent of the facility, the portion of the issue financing the facility allocable to X is 80 percent (50 percent plus 30 percent), because one-half of the 60-percent portion used by Y (30 percent) is considered attributable to the portion owned by X.

(v) *Allocation of remainder of issue to owners.* If the portion of an issue allocated to all test-period beneficiaries of the bank-financed facility (other than related persons) is less than 100 percent, the remainder shall be allocated to test-period beneficiaries who are owners of the facility in proportion to the amount of the issue otherwise allocable to such persons by reason of their ownership interests during the test period.

(vi) *Bond redeemed before person becomes principal user.* If all or some of the outstanding principal amount of the issue in question or of prior bonds is redeemed other than from the proceeds of a refunding issue described in section 103(a) either before or as soon as reasonably practicable after a person becomes a test-period beneficiary with respect to the issue in question, but in no event later than 180 days after the date such person becomes a test-period beneficiary, then the amount of the issue so redeemed will not be allocated to such person (or to a related person) in determining whether the issue in question exceeds the $40 million limitation. With respect to obligations that are issued after August 22, 1986 paragraph(i) (4) (vi) shall not apply if the terms of the issue provide for a delay in redemption a principal purpose of which is to benefit from the 180-day period referred to therein. In the case of a person who becomes a test-period beneficiary before February 21, 1986, bonds redeemed before August 22, 1986 shall be considered redeemed as soon as reasonably practicable for purposes of the first sentence of this paragraph (i) (4) (vi) and the 180-day limitation referred to therein shall not apply.

(5) *Treatment of certain successors as test-period beneficiaries.* If a corporation, partnership, or other entity which is a test-period beneficiary with respect to one or more issues transfers substantially all of its properties to another person (or to two or more related persons within the meaning of section 103(b)(6)(C)), or if a corporation acquires the assets of a test-period beneficiary in a transaction described in section 381(a), the transferee shall be treated as a test-period beneficiary with respect to such issues and shall be allocated the portion of such issues that were allocated to the transferor prior to the transfer. The preceding sentence shall not apply to the extent that it would result in double allocation of an issue, such as in the case of a transfer to a related person. This paragraph (i)(5) shall apply regardless of whether gain is required to be recognized by the transferor for Federal income tax purposes and regardless of whether the transferor remains in existence after the transfer. If the transferor remains in existence after the transfer, this paragraph (i)(5) shall not relieve the transferor of its allocation of any issue. This paragraph (i)(5) shall apply only for purposes of determining the tax exemption of issues of which the transferee becomes the test-period beneficiary after the transfer described herein.

(6) *Examples.* The application of section 103(b) (15) and this paragraph (i) may be illustrated by the following examples:

Example (1). On September 1, 1986, City M issues a $9 million obligation to finance acquisition of a newly constructed shopping center that is placed in service on September 1, 1986, and is owned and managed by Corporation X. Half of the shopping center (determined by fair rental value) is leased for a term exceeding 1 year to Corporation Y. X owns 60 percent of the shares of Y. The other half of the shopping center (also determined by fair rental value) is leased in equal shares for a term exceeding 1 year to A and B, two unrelated corporations. As of September 1, 1986, $30 million of prior issues of obligations are outstanding and are allocable to X as a test-period beneficiary under the rules of § 1.103–10(i)(4). As of that date there is no

prior issue of obligations outstanding and allocable to Y, A, or B as test-period beneficiaries. Because X owns 100 percent of the shopping center, 100 percent of the 1986 issue ($9 million) is allocated to X. Therefore, for purposes of determining whether the 1986 issue exceeds the $40 million limitation of section 103(b)(15), the $30 million of outstanding prior issues must be added to the $9 million 1986 issue. Because Y leases 50 percent of the shopping center, 50 percent of the 1986 issue ($4.5 million) is allocated to Y. Although Y is related to X under section 103(b)(15)(E), the $4.5 million of the 1986 issue that is allocated to Y is not added to the $39 million allocated to X under paragraph (i)(4)(iv) of this section since such amount has already been allocated to X as owner of the shopping center. Because A and B each leases 25 percent of the shopping center, each is allocated 25 percent ($2.25 million) of the 1986 issue.

Example (2). The facts are the same as in *Example (1)* except that A owns a 60-percent interest in an airport hotel described in § 1.103–8(e)(2)(ii)(*d*) and, because of such ownership interest, is allocated $15 million of prior outstanding obligations described in section 103(b)(4)(D). In addition, County N issues $25 million of obligations described in section 103(b)(4)(E) on October 1, 1986, to finance construction of a solid-waste disposal facility that will be owned by C, A's wholly-owned subsidary corporation. In this case, with respect to the September 1, 1986 issue, A is allocated the $15 million prior issue that is outstanding with respect to A's share of the airport hotel bond and the $2.25 million that is A's allocable share of the September 1, 1986, issue for a total of $17.25 million. Because the solid waste disposal facility bonds had not yet been issued when the September 1, 1986, obligation was issued, no portion of the $25 million of obligations to finance C's solid-waste disposal facility will be treated as part of A's allocable obligations with respect to the September 1, 1986, issue even though A and C are related persons. In addition, even though A and C are related persons and even though on the date of issue of the solid-waste disposal bonds C will be allocated more than $40 million of outstanding obligations for purposes of section 103(b)(15) (including A's $17.25 million of outstanding prior obligations), the $40 million limitation of section 103(b)(15) does not render the interest on the October 1, 1986, bonds taxable since the October 1, 1986 issue, qualifies for tax exemption under section 103(b)(4), and the $40 million limitation of section 103(b)(15) does not apply to render taxable bonds issued under section 103(b)(4).

Example (3). On October 1, 1986, City K issues an $8 million issue of obligations exempt under section 103(b)(6) to finance acquisition of a newly-constructed manufacturing plant owned by Corporation L. On October 1, 1986, Corporation M has $35 million of prior outstanding obligations allocable to it under section 103(b)(15). On October 1, 1986, L has no prior outstanding obligations allocable to itself. On April 1, 1988, M acquires 100 percent of the stock of L, which still owns the plant financed by the 1986 issue. Since M and L became related to each other during the 3-year test period of the 1986 issue and L had not ceased to use the facility, the $8 million issue is allocated to M under section 103(b)(15). This allocation causes the 1986 issue to exceed the $40 million limitation of section 103(b)(15) and the interest upon the issue to become taxable on and after October 1, 1986. However, if at least $3 million of the 1986 issue or of other issues allocated to M are redeemed as soon as reasonably practicable, and no later than 180 days after M's acquisition of L's stock then the 1986 issue would not exceed the $40 million limitation.

Example (4). The facts are the same as in *Example (3),* except the October 1, 1986, bonds were issued on January 1, 1985, the plant acquired with the proceeds of the issue was placed in service on January 1, 1985, and M had $39 million of prior outstanding obligations allocable to it on January 1, 1985. Because M and L became related to each other after the test period for the January 1, 1985, issue ended, M is not a test-period beneficiary, and the January 1, 1985, issue does not exceed the $40 million limitation of section 103(b)(15). However, if either M or L subsequently becomes a test-period beneficiary of an issue of obligations, then the outstanding principal amount of the January 1, 1985, issue and of the other issues allocable to M would be taken into account in applying the $40 million limitation to that issue.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86–3859 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[LR–157–84, LR–59–74]

Income Taxes; $40 Million Limitation Upon Beneficiaries of Certain Tax-Exempt Bond Issues and Definition of the Term "Principal User" Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on two proposed regulations. One of the two proposed regulations (LR–157–84) relates to certain industrial development tax-exempt bonds and to certain beneficiaries of such bond issues. The other proposed regulations (LR–59–74) define the term "principal user" for purposes of paragraphs (6) and (15) of section 103(b) of the Internal Revenue Code of 1954.

DATES: The public hearing will be held on Wednesday, June 4, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, May 21, 1986.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–157–84 and LR–59–74), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: One of the two subjects of the public hearing is proposed regulations under section 103(b)(15) of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register** (FR Doc. 86–3859).

The second subject of the public hearing is proposed regulations under section 103(b)(6) of the Internal Revenue Code of 1954. The proposed regulations also appear in this issue of the **Federal Register** (FR Doc. 86–3858).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, May 21, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86–3860 Filed 2–20–86; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[LR-59-74]

Income Taxes; Definition of the Term "Principal User"

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations which would define the term "principal user" for purposes of paragraphs (6) and (15) of section 103(b) of the Internal Revenue Code of 1954. The regulations would affect issuers, holders, and recipients of the proceeds of industrial development bonds issued under section 103(b)(6) of the Code.

DATES: Written comments must be delivered or mailed by April 22, 1986. The amendments are proposed to be effective after August 22, 1986 in determining the tax-exempt status of obligations issued after August 22, 1986.

ADDRESS: Send comments to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-59-74), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: John A. Tolleris of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (Telephone: 202-566-3590, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed clarifying amendments to the Income Tax Regulations (26 CFR Part 1) under section 103(b)(6) of the Internal Revenue Code of 1954.

Explanation of Provisions

The amendments clarify the term "principal user" for purposes of applying the provisions of Code section 103(b)(6) and (15) and the regulations thereunder with respect to small issues of industrial development bonds. Section 103(b)(6) provides, among other things, that an issue of $1 million or less of industrial development bonds financing the acquisition, construction, reconstruction, or improvement of land or property of a character subject to the depreciation allowance (or an issue to redeem such a prior issue) is not exempt from Federal taxation when the issue in question combined with the outstanding face amount of prior issues financing certain similar facilities exceeds $1 million; the facilities which are taken into account for this purpose are those the "principal user" of which is or will be the same or two or more related persons, and which are located within the same county or incorporated municipality.

Section 103(b)(6) also provides that, if an issuer makes the necessary election, the limit for an exempt small issue of industrial development bonds is increased from $1 million to $10 million. In such case, however, certain other amounts must also be aggregated with the issue of obligations in question for purposes of determining whether the $10 million limitation has been exceeded and whether the interest upon the issue of obligations in question is thus subject to Federal income taxation. The additional amounts to be taken into account are certain capital expenditures, made within a 6-year period beginning 3 years before the date of issue of the obligations in question and ending 3 years after the date of issue, with respect not only to the facility financed by the issue, with respect not only to the facility financed by the issue in question, but also with respect to other facilities within the same county or incorporated municipality of which the "principal user" is or will be the same person or a person related to the "principal user" of the facility financed with the issue of obligations in question.

The proposed regulations provide, in general, that the principal users are persons who for tax purposes currently hold more than a 10-percent ownership interest in a facility. In addition, lessees or sublessees who use a sufficiently valuable portion of the facility pursuant to a sufficiently long-term lease are also principal users. Persons with interests comparable to that of an owner or lessee who is a principal user and some purchasers of the output of certain facilities are also treated as principal users.

The proposed regulations provide that, when a facility has more than one principal user, certain issues of obligations with respect to all principal users must be aggregated with the issue of obligations in question for purposes of determining whether the $1 million or $10 million limitation has been exceeded. Similarly, if the $10 million limitation has been elected by the issuer, certain capital expenditures with respect to all principal users must also be aggregated to determine whether the $10 million limitation has been exceeded.

For purposes of aggregating issues of obligations or capital expenditures of persons who are principal users, only issues and capital expenditures with respect to persons who are principal users of the facility before the expiration of the test period described in section 103(b)(15(D) are aggregated. Accordingly, if a person who is a principal user of a facility financed by an exempt small issue becomes the principal user of another facility financed by a second exempt small issue more than 3 years after the later of the date of the second issue or the date the facility financed by the second issue was placed in service, the two issues are not aggregated. Similarly, capital expenditures during the 6-yeaar period described in section 103(b)(6)(D)(ii) with respecf to a principal user are not taken into account if that person does not become a principal user of the facility until more than 3 years after the later of the date of the issue or the date the facililty financed by the issue is first placed in service.

The test-period concept was adopted for purposes of section 103(b)(b)(6) for reasons of administrative convenience. The statutory reference to a person who "is or will be" a principal user could be construed as referring to a person who at any time is a principal user; as referring only to a person who is or is about to be a principal user on the date of issuance; or as referring to a person who becomes a principal user within some intermediate time period. In adopting the test-period concept, the Service attempted to reach a result which gives effect to the statutory language while also being administrable. Adoption of the tests period described in section 103(b)(15)(D) serves the additional function of limiting the period for determination of the principal user status to a single period for purposes of both paragraphs (6) and (15) of section 103(b).

The proposed regulations provide special rules for exempt persons, *i.e.*, State and local governments and organizations that are tax-exempt under section 501(c)(3), that are principal users of facilities financed with exempt small issues of industrial development bonds. For purposes of determining whether the small-issue limitation has been exceeded with respect to any facility of which an exempt person is a principal user, certain industrial development bonds issued with respect to the exempt person and, for purposes of the $10 million limitation, certain capital expenditures must be aggregated with the issue in question. This does not include capital expenditures with respect to other facilities used by the exempt person in an activity other than an unrelated trade or business (as defined by section 513).

Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because the economic and any other secondary or incidental impact flows directly from the underlying statute. A regulatory flexibility analysis, therefore, is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Non-Applicabillty of Executive Order 12291

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

Comments—Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held in accordance with the notice of hearing published in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is John A. Tolleris of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR Parts 1.61–1.281–4

Income taxes, Taxable income, Deductions, Exemptions.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Par. 1. The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 1.103–10 is amended by adding a new sentence after the second sentence of paragraph (b)(2)(i); by deleting "(*e*)" and adding "(*f*)" in lieu thereof in the first sentence of paragraph (b)(2)(iv) introductory text and by adding a new subdivision (*f*) at the end of subdivision (iv) thereof; by adding two new sentences after the first sentence of paragraph (d)(1); by revising paragraph (d)(2)(ii); by adding two new flush sentences at the end of paragraph (d)(2); by revising the introductory text of paragraph (g); and by adding a new paragraph (h). The revised and added provisions read as follows:

§ 1.103–10 Exemption for certain small issues of industrial development bonds.

* * * * *

(b) *Small issue exemption.* * * *

(2) *$10 million or less.* (i) * * * All capital expenditures decribed in paragraph (b)(2)(ii) with respect to each principal user and each related person must be aggregated with the issue of obligations in question for purposes of determining whether the $10 million limitation of section 103(b)(6)(D) is exceeded. * * *

(iv) * * *

(*f*) A capital expenditure with respect to a facility other than the bond-financed facility ("other facility") is an excluded expenditure if the principal user of the other facility does not become a principal user of the facility financed by the proceeds of the issue in question ("bond-financed facility") until after the last day of the test period described in paragraph (i)(3)(ii) of this section. In addition, a capital expenditure with respect to an "other facility" becomes an excluded expenditure on and after the date the principal user of the other facility ceases to use the bond-financed facility; if, however, the issue financing the bond-financed facility lost its tax-exempt status on or before that date, this sentence will not apply to restore its tax-exempt status. * * *

* * * * *

(d) *Certain prior issues taken into account*—(1) *In general.* * * * Thus, the outstanding face amount of all prior issues specified in paragraph (d)(2) with respect to each principal user and each related person and taken into account under this paragraph (d)(1) must be aggregated with the issue of obligations in question for purposes of determining whether the $1 million limitation of section 103(b)(6)(A) or the $10 million limitation of section 103(b)(6)(D) has been exceeded with respect to the issue in question. The outstanding face amount of the prior exempt small issue is the principal amount outstanding at the time of issuance of the subsequent exempt small issue. * * *

(2) *Prior issues specified.* * * *

(ii) The principal user of the facilities described in paragraph (d)(2)(i) of this section is the same person or two or more related persons (as defined in section 103(b)(6)(C) and in paragraph (e) of this section) at any time on or after the date of issue of the subsequent issue but before the expiration of the test period described in paragraph (i)(3)(ii) of this section with respect to the subsequent issue.

The loss of tax exemption with respect to the interest on the subsequent issue shall be effective on the date of issue of the subsequent issue. For purposes of this paragraph (d), when a person ceases to use a facility financed by either the prior issue or the subsequent issue, the prior issue will no longer be taken into account under paragraph (d)(1) with respect to the subsequent issue; if, however, the subsequent issue loses its tax-exempt status on or before the date the person ceases to use either of the facilities described in this subparagraph, this paragraph will not apply to restore the tax-exempt status of the subsequent issue. * * *

* * * * *

(g) *Examples.* The application of the rules contained in section 103(b)(6) and in paragraphs (a) through (f) of this section are illustrated by the following examples: * * *

* * * * *

(h) *Rules relating to principal users*—(1) *Definition of principal user.* For purposes of section 103(b)(6) and § 1.103–10, the term "principal user" means a person who is a principal owner, a principal lessee, a principal output purchaser, or an "other" principal user. The term "principal user" also includes a person who is related to another person who is a principal user under section 103(b)(6)(C) and paragraph (e) of this section, unless the other person ceased to use the facility before the two persons become related. For purposes of this paragraph (h)—

(i) *Principal owner.* A principal owner is a person who at any time holds more than a 10-percent ownership interest (by value) in the facility or, if no person holds more than a 10-percent ownership interest, then the person (or persons in the case of multiple equal owners) who holds the largest ownership interest in the facility. A person is treated as holding an ownership interest if such person is an owner for Federal income tax purposes generally. Thus, for example, where a facility constructed on land subject to a ground lease has an economic useful life less than the noncancellable portion of the term of the ground lease, the ground lessor shall not, merely by reason of that reversionary interest, be treated as the principal user of the facility before the ground lease expires.

(ii) *Principal lessee.* A principal lessee is a person who at any time leases more than 10 percent of the facility (disregarding portions used by the

lessee under a short-term lease). The portion of a facility leased to a lessee is generally determined by reference to its fair rental value. A short-term lease is one which has a term of one year or less, taking into account all options to renew and reasonably anticipated renewals.

(iii) *Principal output purchaser.* A principal output purchaser is any person who purchases output of an electric or thermal energy, gas, water, or other similar facility, unless the total output purchased by such person during each one-year period beginning with the date the facility is placed in service is 10 percent or less of the facility's output during each such period.

(iv) *Other principal user.* An "other" principal user is a person who enjoys a use of the facility (other than a short-term use) in a degree comparable to the enjoyment of a principal owner or a principal lessee, taking into account all the relevant facts and circumstances, such as the person's participation in control over use of the facility or its remote or proximate geographic location. For example, a party to a contract who would be treated as a lessee using more than 10 percent of a facility on a long-term basis but for the special rules of section 7701(e) (3) and (5) (relating to service contracts for certain energy and water facilities and low-income housing) is an "other" principal user. A short-term use means use that is comparable to use under a short-term lease.

(2) *Operating rules.* (i) In determining whether a person is a principal user of a facility, it is irrelevant where in a chain of use such person's use occurs. For example, where a sublessee subleases more than 10 percent of a facility from a lessee, both the lessee and the sublessee are principal lessees.

(ii) In determining whether a person owns or uses more than 10 percent of a facility or whether he uses it for more than one year, the person is treated as owning or using the facility to the extent that any person related to such person under section 103(b)(6)(C) and paragraph (e) of this section owns or uses the facility. For purposes of the preceding sentence, the term "use" includes use pursuant to an output purchase arrangement.

(iii) Co-owners or co-lessees who are collectively treated as a partnership subject to subchapter K under section 761(a) are not treated as principal users merely by reason of their ownership of partnership interests; such ownership is, however, taken into account in determining whether persons are related under section 103(b)(6)(C) and paragraph (e) of this section.

(iv) For purposes of this section, a principal user of a facility is treated as ceasing to use the facility when he ceases to own, lease, purchase the output of, or otherwise use the facility, as the case may be. A person who is a principal user of a facility because he is related to another person who is a principal user is treated as ceasing to use the facility when the other person ceases to use the facility or when the two persons cease to be related. A principal user who ceases to use a facility continues to be a principal user. See, however, paragraph (b)(2)(iv)(*f*) of this section (relating to excluded expenditures), paragraph (d)(2) (relating to prior issues), and paragraph (h)(1) (defining principal user), which may apply when a principal user ceases to use a facility.

(3) *Special rule for exempt persons.* If an exempt person, as defined in section 103(b)(3) and § 1.103–7 (b)(2), is a principal user of a facility financed with an issue of obligations described in section 103(b)(6), the following amounts must be aggregated with the issue in determining whether the $1 million limit of section 103(b)(6)(A) or the $10 million limit of section 103(b)(6)(D) has been exceeded:

(i) The outstanding face amount of any prior exempt small issue of industrial development bonds described in paragraph (d) of this section that financed a facility of which the exempt person is a principal user,

(ii) For purposes of the $10 million limitation, capital expenditures described in paragraph (b)(2) (ii) of this section paid or incurred with respect to other facilities used by the exempt person in an unrelated trade or business (within the meaning of section 513 and § 1.513–1) and of which the exempt person is a principal user, and

(iii) Any section 103(b)(6)(D) capital expenditures paid or incurred with respect to the facility financed by the issue in question.

(4) *Examples.* The application of the rule of section 103(b)(6) and this paragraph (h) is illustrated by the following examples:

Example (1). On September 1, 1986, City L, after making the section 103(b)(6)(D) election, issues $8 million of obligations to finance the costs of acquiring a newly constructed warehouse within City L, owned by Corporation Z, a non-exempt person, which thus is a principal user of the warehouse. Beginning on September 1, 1986, the entire warehouse is leased to Corporation Y, an unrelated non-exempt person, for a 2-year term; thus, Y is also a principal user of the warehouse. On June 30, 1988, Y ceases to lease the warehouse. On October 1, 1988, Y incurs $20 million of capital expenditures in connection with its purchase of an office building in City L. Although Y continues to be a principal user of the warehouse under paragraph (h)(2)(iv) of this section, Y's capital expenditures after the date it ceases to use the warehouse are excluded expenditures under paragraph (b)(2)(iv)(*f*) of this section. Accordingly, the $20 million Y incurred with respect to the office building is not taken into account for purposes of determining whether the $10 million limitation of section 103(b)(6)(D) has been exceeded.

Example (2). The facts are the same as in Example (1), except that on October 1, 1985, City L issued an exempt small issue to finance acquisition of a newly constructed office building in the amount of $5 million, of which $4 million is outstanding on September 1, 1986. On December 1, 1988, Corporation Z leases 15 percent (by fair rental value) of the office building financed by the 1985 issue for a 2-year term. Thus, beginning on December 1, 1988, Z is a principal user of the office building. On December 1, 1988, Z still owns the warehouse financed by the 1986 issue. Because Z became a principal user of the office building before the end of the 3-year test period described in paragraph (i)(3)(ii) of this section with respect to the 1986 issue, the $4 million outstanding amount of the 1985 issue must be aggregated with the $8 million 1986 issue for purposes of determining whether the 1986 issue has exceeded the $10 million limitation of section 103(b)(6)(D). Because the sum of the two issues ($4 million of the prior 1985 issue outstanding on September 1, 1986, and the $8 million subsequent issue issued on September 1, 1986) exceeds $10 million, the interest on the 1986 issue ceases to be tax-exempt on September 1, 1988. Had Z's lease begun after September 1, 1989, the two issues would not have to be aggregated.

Example (3). On June 1, 1985, City O issues $15 million of its obligations to finance an expansion of a hospital owned by H, an organization described in section 501(c)(3) exempt from taxation under section 501(a). None of the proceeds of the issue will be used by H in an unrelated trade or business or in the trade or business of non-exempt persons. On November 1, 1986, City O, after making the section 103(b)(6)(D) election, issues $5 million of its obligations to construct a medical office building which will be owned by H for Federal income tax purposes and which will be entirely leased (for terms in excess of one year) to physicians, none of whom will lease over 10 percent of the building by value. On July 1, 1987, H incurs a $500,000 capital expenditure for permanent improvements to the medical office building. In addition, on August 1, 1987, W, a non-exempt person related to H, incurs a $1 million capital expenditure with respect to a facility that W owns within City O and uses in its trade or business. For purposes of determining whether the $10 million limitation of section 103(b)(6)(D) has been exceeded with respect to the November 1, 1986, issue for the medical office building, H must take into account the $5 million issue, the $500,000 of capital expenditures made with respect to the medical office building, and W's $1 million capital expenditure.

Because the sum of these amounts is less than $10 million, interest on the issue does not cease to be tax-exempt. H is not required to take into account the June 1, 1985, issue financing the hospital expansion because that issue is not an exempt small issue as defined in section 103(b)(6) (see paragraph (h)(3)(i) of this section) and because the cost of the facility financed by the June 1, 1985, issue is neither a section 103(b)(6)(D) capital expenditure with respect to the medical office building owned by H (see paragraph (h)(3)(iii) of this section) nor a section 103(b)(6)(D) capital expenditure for a separate facility used by H in an unrelated trade or business (see paragraph (h)(3)(ii) of this section).

* * * * *

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 86-3858 Filed 2-20-86; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2972-4]

Approval and Promulgation of Implementation Plans; Air Pollution Control Regulations, State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Sanat Barbara County Air Pollution Control District (SBCAPCD) adopted a New Source Review Rule on April 2, 1984. The Rule contains provisions comparable to EPA's requirements for both New Source Review (NSR) and Prevention of Significant Deterioration (PSD). It regulates construction and operation of new and modified major stationary sources of both nonattainment and attainment pollutants. The District adopted the Rule to satisfy conditions on the approval of its previous NSR Rule and to obtain authority from EPA to issue permits for PSD. This Rule was submitted to EPA as a State Implementation Plan (SIP) revision on May 21, 1984. EPA is proposing to approve the Rule but to disapprove four exemptions. The approval of the major portions of Rule 205.C is contingent on resolution of issues necessary to fully meet EPA's requirements. The District has been extremely cooperative in resolving EPA's concerns.

DATE: Comments may be submitted up to March 24, 1986.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, New Source Section (A-3-1), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the District's Rule and EPA's Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office listed above and at the following locations:

California State Air Resources Board, Public Information Office, 1102 "Q" Street, Sacramento, CA 95814

Santa Barbara County Air Pollution Control District, Health Care Service, 315 Camino del Remedio, Santa Barbara, CA 93110.

FOR FURTHER INFORMATION CONTACT: Willard Chin, State Liaison Section (A-2-2), Air Management Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105 (415) 974-8071.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1982 (47 FR 19330), EPA approved the Nonattainment Area Plan and NSR Rule for the Santa Barbara County APCD, subject to certain conditions. One of the conditions was that the NSR Rule be revised to satisfy EPA's regulations of August 7, 1980 (40 CFR 51.18).

The new Rule 205.C was written to satisfy the NSR condition imposed by EPA in 1982 and also to serve as the basis for securing full authority from EPA for issuing PSD permits. The Rule follows the NSR/PSD Rule developed by the California Air Pollution Control Officers' Association (CAPCOA) and the California Air Resources Board. It combines NSR and PSD in a single review program and includes specific procedures to plan and regulate sources in areas where clean air is particularly important. EPA requires NSR Rules for pollutants of which an area is designated nonattainment. PSD rules apply to pollutants for which an area is designated attainment. The entire County is attainment for nitrogen oxides, carbon monoxide and unclassified for sulfur dioxide. The Southern Coastal area of the County is nonattainment for ozone and the Santa Maria area is nonattainment for TSP.

NSR—Part D of the Clean Air Act (Sections 171 to 173) and EPA regulations (40 CFR 51.18) define the requirements for NSR programs. The most important requirements are that the rules require applicants for new sources or modifications to: (a) Meet the Lowest Achievable Emission Rate, (b) provide emission reductions (offsets) at least equal to the proposed emission increases and consistent with RFP, and (c) certify that all of their sources in the State comply with all emission limitations. Where growth allowances are provided, offsets may not be needed. Santa Barbara County currently administers the NSR program under its conditionally approved Rule.

PSD—Subpart 1 of Part C of the Clean Air Act (Sections 160 to 169) and EPA regulations (40 CFR 51.24) contain requirements for PSD. The PSD requirements apply to criteria pollutants which are designated attainment and to the non-criteria pollutants which are also regulated under Sections 111 and 112 of the Act. Santa Barbara APCD is currently administering the PSD program under a delegation agreement with EPA. When PSD regulations for the Santa Barbara County are approved, the delegation agreement will terminate. The District will continue to issue federally valid PSD permits, but the Santa Barbara rule will replace 40 CFR 52.21 as the federally enforecable PSD regulation. The primary requirements for a PSD program include: (1) The application of "Best Available Control Technology" (BACT) to new or modified major stationary sources; (2) requiring applicants to demonstrate that the increased emissions will not cause violations of any National Ambient Air Quality Standard (NAAQS) or air quality increments; and (3) requiring protection of Class I areas, where very little air quality deterioration is allowed.

Description of Regulations

The District adopted Rule 205.C on April 2, 1984. It was submitted to EPA by the Governor's designee as an official SIP revision on May 21, 1984. The new Rule 205.C adopted by the District supersedes and entirely replaces the old rule.

Evaluation

EPA has evaluated Rule 205.C against its NSR and PSD approval criteria. The District's Rule satisfies EPA's requirements, except as described below and in the Evaluation Report. The Rule will: (1) Require preconstruction review of those sources for which EPA requires it; (2) require BACT and air quality protection consistent with EPA's PSD requirements; and (3) require certification of statewide compliance, application of LAER, and offsets in a manner consistent with EPA's NSR requirements.

EPA found several deviations from EPA requirements. Specifically, EPA

found several deficiencies which will require District remedies and several less significant issues which can be resolved by District commitments or clarifications.

EPA explained all these issues to the District. Agreement has been reached on resolution of all the issues. The District presented information that shows EPA's requirements have already been met in some cases. The District has been very cooperative.

EPA's Evaluation Report explains all the issues in detail. The Report is available at the locations listed in the **ADDRESSES** section of this Notice.

The major problems described in the Evaluation Report are:

(1) The definition of Good Engineering Practice Stack Height is not consistent with EPA's final regulation (FR 27892 7/8/85).

(2) For NSR, the rule exempts cogeneration and resource recovery projects from required emission reductions by means of an offsets or an approved growth allowance (CAA 173 (1)). The exemptions are not in the existing SIP.

(3) For the PSD program, the rule exempts cogeneration and resource recovery projects from the increment protection requirements.

(4) EPA needs to be assured that the District use of offsets from non-stationary sources meets federal offset requirements.

A potential issue is the nitrogen dioxide (NO_2) relationship as a precusor to ozone. The District is currently nonattainment for ozone but is projected to attain the standard by 1987. Rule 205.C implies that NO_2 is to be treated as a precusor to ozone. The District has informed EPA that where Rule 205.C makes general references to precursor regulation, the references incorporate the NO_2 and Ozone relationship. Thus, the rule implicitly subjects to both NSR and PSD requirements all major sources of NO_2 locating in the ozone nonattainment portion of the County. Such a policy helps assure expeditious attainment of the ozone standard and is consistent with the modeling assumptions in the ozone attainment demonstration in the AQAP control strategy. To clarify District and federal enforcement of Rule 205.C, the District must provide EPA with an explicit written statement that the rule will be implemented to consider NO_2 as a precursor to ozone and thus subject to the requirements of new source review as well as PSD, in the ozone nonattainment areas. This clarification can be made in a letter to EPA signed by the Chair of the Santa Barbara County Air Pollution Control Board.

EPA's review of Rule 205.C has determined that the use of emissions reductions of attainment pollutants from the Outer Continental Shelf (OCS) will under limited provisions meet federal requirements. The following section discusses the different elements and the EPA's interpretation of the OCS provisions.

The PSD section contains a provision (2.b.5) which exempts a source from the offset requirements for attainment pollutants if the emissions reduction from the overall project (onshore and offshore) is greater than the reduction that would have resulted if the offset requirement had been applied to the onshore component of the project. The source applicant must demonstrate to the APCO that the combined use of new and innovative technology, BACT or emissions tradeoffs applied to the sources both subject to and outside the APCD's jurisdiction, or through the use of other project mitigation can accomplish a lower level of emissions relative to reductions from offsets as specified in (3.b.2). The exemption in (2.b.5) also contains language to assure that: (1) Legally mandated emissions reductions (i.e., reductions otherwise required by law) cannot be counted as reductions in the project overall; (2) emissions from the overall project will not cause the violation of any ambient air quality standard or maximum allowable air quality increment; (3) a source using emissions reductions beyond District jurisdiction must submit necessary information to disclose the nature, extent, quantity or degree of air contaminants to the extent provided as emissions reductions; (4) the APCD may require compliance testing with reasonable frequency.

Net reductions from an overall project (as opposed to a single source) is an innovative concept but given the restrictions and conditions of this provision, this exemption for attainment pollutant offset is approvable. EPA's main concern is the enforceability of such reductions. Offshore facilities located three miles beyond the Santa Barbara coast could provide valid, federally enforceable offsets for attainment pollutants if a specific enforcement mechanism exists whereby the District and EPA legal representatives could enforce the offsets in accordance with the District legal authority and the Clean Air Act. Rule 205.C defines a stationary source as either: (1) Any building, structure, or facility, or (2) an installation which includes any operation, article, machine, equipment, contrivance or grouping of equipment belonging to the same two-digit standard industrial classification code, or (3) a part of common operations, related through dependent process, storage or transportation of the same or similar production or raw material. It is typically the common operations provision that allows the District to review emissions of related onshore and offshore facilities. The District can require emissions reductions from either the onshore or offshore portion of the operation (or both) in order to meet the requirements of Rule 205.C.

There are two potential New Source Review (NSR) issues related to the coastal areas' nonattainment status and offshore reductions which need to be clarified: (1) The qualitative difference between reductions from offshore and reductions from onshore and (2) the Outer Continental Shelf (OCS) emissions' impact on the Air Quality Attainment Plan.

It is conceivable that nonattainment sources located beyond District boundaries will be used to provide offsets for onshore facilities located in a nonattainment area. Because of distance and meteorology, the impacts of such offshore reductions may be different than those reductions from offsets found near the source.

However, the provisions of (3.a.3) (Air Quality Impact Analysis); (3.a.4) (Emissions Trade-offs) and (1.a.22) (Net Air Quality Benefit) require the District to determine that offshore or onshore reductions be sufficient to offset any net emissions increase and result in a net air quality benefit. The District can require the applicant to demonstrate that the offset ratio results in a net air quality benefit for the project consistent with the RFP provision of the County AQAP.

For both attainment and nonattainment offshore emissions credits, EPA will pursue discussions with the Department of Interior's Minerals Management Service and the District to develop an enforcement protocol agreement which stipulates the roles of the respective agencies involved. A variety of enforcement mechanisms will be explored but one possibility is an EPA to validate such emissions reductions' conformity to federal requirements. EPA believes that, assuming federal enforceability of such offshore reductions can be established, the above provisions provide the safeguards necessary to prevent misapplication of offshore emissions reductions.

Another potential issue is the need for a complete analysis of the cumulative

OCS emissions' impact on attainment of the ambient standards. The current AQAP does not include OCS emissions in the attainment demonstration. Santa Barbara County, California Air Resources Board (ARB), U.S. Minerals Management service (MMS) and EPA ar engaged in the Joint Interagency Modeling Study in order to quantify the impact of all OCS emissions on the Santa Barbara nonattainment area. This study should form the basis for the Air Quality Attainment Plan revision in 1986. EPA has informed the District that it may have to require greater onshore and offshore controls at a future date as a part of the 1986 AQAP revision in order to continue expeditious attainment of the anbient standards.

Proposed Action

Under section 110, Subpart 1 of Part C, and Part D of the Clean Air Act, EPA proposes to approve Rule 205.C, with the exception of sections (2.a.2), (2.a.3.), (2.b.2), and (2.b.3) (the NSR and PSD exemptions for cogeneration and resource recovery sources constitute a relaxation of the SIP) which will be disapproved. Before EPA final approval can be given, the District must resolve the issue listed and described above (and described in more detail in EPA's evaluation report). Specifically, EPA will not go to final rulemaking until the District revises its GEP definition. Many of the issues can be resolved by a written commitment submitted by the District: ozone precursor, health and welfare impact, exemption, Class I Impact Area, BACT definition, innovative control technology, emissions calculation and transportation offsets (see evaluation report for complete discussion of all the issues). EPA will assist the District in its effort to resolve the problems rapidly. Based on these expectations, EPA proposes to approve the main portions of Rule 205.C and to disapprove provisions (2.a.3), (2.a.2), (2.b.2), and (2.b.3). If all the problems are corrected, EPA proposes to rescind 40 CFR 52.270 for most sources in Santa Barbara County. 40 CFR 52.270 gives EPA the authority to regulate and permit PSD sources in Santa Barbara County. Since EPA intends to terminate the PSD delegation agreement upon final rule approval, this rescission would grant Santa Barbara that authority except for PSD cogeneration and resource recovery sources and projects locating in Indian lands for which EPA will retain permitting authority.

EPA also proposes to rescind 40 CFR 52.232(a)(9)(i)(A) and once these problems are remedied, Santa Barbara County will have satisfied the 1982 NSR revision condition included in 40 CFR 52.232.

Regulatory Process

Under Executive Order 12291, today's action is not major. It has been submitted to the Office of Management and Budget (OMB) for review. I certify that this action will not have a significant economic impact on a substantial number of small entities, since only those sources which are cogeneration or resource recovery sources that would reach permitting threshold levels of rule 205.C may be affected by the disapproval.

List of Subjects in 40 CFR Part 52

Air pollution control.

Authority: 42 U.S.C. 7401–7642.

Dated: September 27, 1985.

John Wise,

Acting Reginal Administrator.

[FR Doc. 86–3828 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–17; RM–4973]

FM Broadcast Station in Kings Beach, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On February 3, 1986, the Commission, by its Mass Media Bureau, published a Notice of Proposed Rule Making in this proceeding concerning the allotment of an FM broadcast station in Kings Beach, CA (51 FR 4191). In the preamble, the comment and reply comment dates were incorrectly referred to as March 6, 1986, and March 21, 1986, respectively.

DATES: The correct filing dates for comments and reply comments are March 21, 1986, and April 7, 1986, respectively.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, Washington, DC 20554, (202) 634–6530.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 86–3719 Filed 2–20–86; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 86–52; RM–4946; RM–5097]

FM Broadcast Station in Quincy, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channels 262A and 276A to Quincy, California, as that community's second and third FM service, in response to petitions filed by Judith Anne Wittick and Ronald Trumbo d/b/a New Life Broadcasting.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Quincy, California), MM Docket No. 86–52, RM–4946, and RM–5097.

Adopted: January 24, 1986.

Released: February 14, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration two separate petitions for rule making. The first, filed by Judith Anne Wittick ("Wittick") requests the allotment of Channel 262A to Quincy, California, as that community's second local FM service. Additionally, a separate petition was filed by Ronald Trumbo ("Trumbo") d/b/a New Life Broadcasting, requesting the allotment of Channel 276A to Quincy.[1] Both parties have indicated their intention to apply for the respective channels.

2. A staff engineering study reveals that both Channels 262A and 276A can

[1] Initially, Trumbo also requested the allotment of Channel 261A to Quincy but subsequently withdrew his interest in that proposal.

be allotted to Quincy in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. In view of the fact that the proposed allotments could provide a second and third local FM service to Quincy, California, for the expression of diversified viewpoints and programming, the Commission believes it is appropriate to elicit comments on the proposals to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with regard to that community, as follows:

City	Channel No.	
	Present	Proposed
Quincy, CA	270	262A, 270, and 276A.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before April 7, 1986, and reply comments on or before April 22, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Chester J. Stuart, P.O. Box 1236, Susanville, CA 96130, (Consultant to petitioner)

and

Peter A. Casciato, Esq., Media Building, 943 Howard Street, San Francisco, CA 94103, (Counsel for Ronald Trumbo)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.*

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix—MM Docket No. 86-52, RM-4946, and RM-5097

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is proposed to amend the FM Table of Allotments, §§ 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-3718 Filed 2-20-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-54; RM-5012; RM-5050]

FM Broadcast Station in Rancho Mirage and La Quinta, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein considers two mutually-exclusive proposals. The first, filed by RWR Associates seeks the allotment of FM Channel 258A to Rancho Mirage, California, while the second, filed by Kern Broadcasting Co., seeks to allot Channel 258A to La Quinta, California. The channel could provide a first local service to either community.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancey V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Rancho Mirage and La Quinta, California); MM Docket No. 86-54, RM-5012, and RM-5050.

Adopted: January 24, 1986.
Released: February 14, 1986.

By the Chief, Policy and Rules Division.

1. The Commission herein considers two separately filed petitions for rule making. The first, filed by RWR Associates ("RWR") requests the allotment of FM Channel 258A to Rancho Mirage, California, while the second, filed by Kern Broadcasting Co. ("Kern") seeks to allot Channel 258A to La Quinta, California. The channel could provide a first local service to either community.

2. Rancho Mirage (population 6,281),[1] in Riverside County (population 663,199), is located approximately 18 kilometers (12 miles) southeast of Palm Springs, California. La Quinta (population 3,328) also in Riverside County, is located 36 kilometers (22 miles) southeast of Palm Springs.

3. A staff engineering study reveals that Channel 258A can be alloted to either community in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules. However, the distance between Rancho Mirage and La Quinta, California, is approximately 12.7 kilometers, whereas 105 kilometers is required between co-channel Class A allotments. Therefore, the proposals are mutually exclusive.

4. As a result of the above-noted conflict, petitioners may wish to consider whether other channels may be available to their community. If no other channels are available, interested parties should make a comparative evaluation of the proposals. See *Revision of FM Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

5. Since both of the proposals are located within 320 kilometers (199 miles) of the common U.S.-Mexico border, concurrence of the Mexican Government must be obtained.

6. We believe both proposals merit consideration since they could provide a first local service to either community. Therefore, we consider it appropriate to seek comments on the proposals to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Rancho Mirage, CA		258A
or		
La Quinta, CA		258A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before April 7, 1986, and reply comments on or before April 22, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Martin R. Leader, Esq., Fisher, Wayland, Cooper and Leader, 1255-23rd Street, NW., Suite 800, Washington, DC 20037 (Counsel for RWR Associates)

and

Riley M. Murphy, Esq., Fawer, Brian, Hardy & Zatzkis, 700 Camp Street, New Orleans, Louisiana 70130-3702 (Counsel for Kern Broadcasting Co.)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, Certification *that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix—MM Docket No. 86-54, RM-5012, and RM-5050

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g), and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached.

[1] Population figures were extracted from the 1980 U.S. Census.

Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments as reply comments shall be accompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-3717 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 85-82; RM-4901]

TV Broadcast Station in Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: Action taken herein denies a petition for rule making filed by Valley Associates, seeking the substitution of UHF television Channel 47 for Channel 42 at Little Rock, Arkansas, for failure to establish alleged siting constraints.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended; 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations, (Little Rock, Arkansas); (MM Docket No. 85-82, RM-4901).

Report and Order (Proceeding Terminated)

Adopted: January 29, 1986.
Released: February 14, 1986.
By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 50 FR 14265, published April 11, 1985, proposing the substitution of UHF television Channel 47 [1] for Channel 42 at Little Rock, Arkansas, in order to provide greater site flexibility for potential applicants, in response to a petition filed by Valley Associates ("petitioner"). Supporting comments were filed by petitioner indicating it would apply for the channel, if it is assigned. No reply comments were received.

2. Since the *Notice* herein was adopted, four applications for Channel 42 at Little Rock have been filed.[2] A review of the proposed transmitter locations contained in those applications establishes compliance with the minimum distance separation and other technical requirements of the Commission's Rules. Therefore, we find no merit to the petitioner's contention that Channel 42 is unfavorable for purposes to site availability.

3. Accordingly, in view of the above finding, it is ordered, that the petition for rule making filed by Valley Associates to substitute Channel 47 for Channel 42 at Little Rock, Arkansas, is denied.

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-3720 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

[1] Petitioner initially requested the substitution of Channel *54 for unused Channel *28 at Russellville, Arkansas, to alleviate alleged siting constraints on Channel 42 at Little Rock. However, the Commission determined that Channel 47 could be substituted for Channel 42 at Little Rock, thus precluding the necessity for the requested substitution at Russellville.

47 CFR Part 73

[MM Docket No. 86-53; RM-5027]

TV Broadcast Station in Twentynine Palms, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign UHF television Channel 31 to Twentynine Palms, California, as that community's first local television broadcast service, in response to a petition filed by Pacer Television Company.

DATES: Comments must be filed on or before April 7, 1986, and reply comments on or before April 22, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

[2] Applications have been filed by Dale Leininger (BPCT-850607KO); Capital Communications Corporation (BPCT-850725LB); Maumelle TV (BPCT-850725LF); and Magnolia Communications (BPCT-850725KE).

FOR FURTHER INFORMATION CONTACT:
Nancy V. Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Proposed Rule Making

In the matter of amendment of §73.606(b), Table of Assignments, TV Broadcast Stations. (Twentynine Palms, California); (MM Docket No. 86–53, RM–5027)

Adopted: January 24, 1986.
Released: February 14, 1986.

By the Chief, Policy and Rules Division:

1. A petition for rule making has been filed by Pacer Television Company ("petitioner") requesting the assignment of UHF television Channel 31 to Twentynine Palms, California, as that community's first local television broadcast service. Petitioner stated that he will apply for the channel, if assigned.

2. Twentynine Palms (population 7,465), [1] in San Bernardino County (population 895,016), is located approximately 210 kilometers (130 miles) east of Los Angeles.

3. A staff engineering study reveals that UHF television Channel 31 can be assigned to Twentynine Palms, California, in conformity with the minimum distance separation requirements of §§ 73.610 and 73.698 of the Commission's Rules. Since Twentynine Palms is within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission must obtain the concurrence of the Mexican government in the proposal.

4. In view of the above, we believe the petitioner's proposal warrants consideration since it could provide a first local television broadcast service to Twentynine Palms. Accordingly, the Commission proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to Twentynine Palms, California, as follows:

[1] Population figures were extracted from the 1980 U.S. Census.

City	Channel No.	
	Present	Proposed
Twentynine Palms, CA		31

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before April 17, 1986, and reply comments on or before April 21, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel, or consultant, as follows: Lyle R. Evans, 1145 Pine Street, Green Bay, WI 54301 (consultant to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutues an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1) 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* They will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate

pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be acompanied by a certificate of service. (See §§ 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of §1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, DC.

[FR Doc. 86-3721 Filed 2-20-86; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252.

Federal Acquisition Regulation Supplement Limitation of Progress Payments

AGENCY: Department of Defense.

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering changes to the coverage in the DoD FAR Supplement regarding Limitation of Progress Payments in DoD contracts. The purpose of the proposed change is to implement section 916 of the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145).

DATE: Comments on the proposed revisions should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before March 24, 1986, to be considered in the formulation of the final rule. Please cite DAR Case 85-218 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7268.

SUPPLEMENTARY INFORMATION:

A. Background

Section 916 of the Defense Procurement Improvement Act of 1986 (Pub. L. 99-145) placed the following limitations on progress payments: (1) Must be commensurate with work accomplished and (2) may not exceed 80 percent if the contract action is undefinitized. The changes included in this notice will, if adopted, implement those limitations.

B. Regulatory Flexibility Act

This Regulatory Flexibility Analysis Summary is provided in accordance with 5 U.S.C. 603(a). The proposed changes to DFARS 232 and 252 will apply to all small entities receiving or requesting progress payments under defense contracts. About 7,800 small entities hold approximately 15,700 defense contracts containing the Progress Payments Clause. This analysis assumes that each small business having such a contract is requesting progress payments. However, the number of small businesses having undefinitized defense contracts to which the 80 percent limitation will apply is unknown because such data is not collected.

A complete Regulatory Flexibility Analysis has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Copies of the analysis may be obtained from the Office of the Chief Counsel for Advocacy, U.S. Small Business Administration, 1441 L Street NW. (Room 1012), Washington, DC 20416.

C. Paperwork Reduction Act Information

The proposed rule, if adopted, would apply to undefinitized Basic Ordering Agreements and Letter Contracts. Contractors already keep records on these contractual instruments. All that would be needed is changing the new progress payment rate on the request for such payments. It is expected that the impact would be so minimal as to be immeasurable.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 232 and 252 be amended as follows:

PART 232—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 232 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 232.070 is added to read as follows:

232.070 Definition.

"Contract action", as used in this part, means an action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Change clause, or funding and other administrative changes.

3. Section 232.102 is amended by revising paragraph (e)(2) to read as follows:

232.102 Description of Contract Financing Methods.

* * * * *

(e)(2) Progress payments based on a percentage or state of completion will be confined to contracts for construction, shipbuilding, and ship conversion, alteration or repair. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

4. Section 232.111 is amended by adding paragraphs (S-71), (S-72), to read as follows:

232.111 Contract Clauses.

* * * * *

(S-71) The contracting officer shall insert the clause at 252.232-7005, Payments Under Fixed-Price Construction Contracts, in lieu of FAR clause 52.232-5, in solicitations and contracts for construction when a fixed-price contract if contemplated.

(S-72) The contracting officer shall insert the clause at 252.232-7006, Payments Under Fixed-Price Architect-Engineer Contracts, in lieu of FAR clause 52.232-10, appropriately modified with respect to payment due dates, in fixed-price architect-engineer contracts.

5. Section 232.501-1 is amended by revising in the second sentence of paragraph (a) the term "CASH II" to read "CASH III"; by deleting the last sentence of paragraph (a); and by

adding paragraph (S–70) to read as follows:

232.501–1 Customary Progress Payment Rates.

* * * * *

(S–70) The Defense Procurement Improvement Act of 1986 (Pub. L. 99–145) limits progress payments to 80% on work accomplished under undefinitized contract actions. A higher rate is not authorized and is not within the meaning of unusual progress payments.

6. Section 232.502–4 is amended by adding paragraphs (S–72), (S–73), and (S–74) to read as follows:

232.502–4 Contract Clauses.

* * * * *

(S–72) The contracting officer shall insert the clause at 252.232–7007, Progress Payments, in lieu of FAR clause 52.232–16 and its Alternates I and II, in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs.

(S–73) If the contract contains a contract action that is not definitized, the contracting officer shall use the clause with its Alternate I.

(S–74) If the contract is a letter contract, the contracting officer shall use the clause with its Alternate II.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. The authority for Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

8. Sections 252.232–7005, 252.232–7006, and 252.232–7007 are added to read as follows:

252.232–7005 Payments Under Fixed-Price Construction Contracts.

As prescribed in 232.111(S–71), insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (JAN 1986) (DEV.)

(a) The Government shall pay the Contractor the contract price as provided in this contract.

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets standards of quality established under the contract, as approved by the Contracting Officer. If requested by the Contracting Officer, the Contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site may also be taken into consideration if—

(1) Consideration is specifically authorized by this contract; and

(2) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) In making these progress payments, the Contracting Officer may retain a maximum of ten percent (10%) of the approved estimated amount until final completion and acceptance of the contract work. If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize payment to be made in full without retention of a percentage. However, by the time the work is substantially complete, the Contracting Officer shall have retained an amount that the Contracting Officer considers adequate protection of the Government and may then release to the Contractor all or a portion of any excess amount. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment may be made for the completed work without retention of a percentage.

(d) All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(e) In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (c) above shall apply to that portion of progress payments attributable to bond premiums.

(f) The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 203 and 41 U.S.C. 15).

(g) Notwithstanding any other provision of this contract, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of Clause)

252.232–7006 Payments Under Fixed-Price Architect-Engineer Contracts.

As prescribed in 232.111(S–72), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (JAN 1986) (DEV.)

(a) Estimates shall be made monthly of the amount and value of the work accomplished and services performed by the Contractor under this contract which meet standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Office.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of ninety percent (90%) of the approved amount, less all previous payments; *Provided,* that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. If the Government exercises the option under the Option for Supervision and Inspection Services clause, progress payments as provided for in (a) and (b) above will be made for this portion of the contract work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed eighty percent (80%) on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of Clause)

252.232-7007 Progress Payments.

(a) As prescribed in 232.502-4(S-72), insert the following clause in solicitations and fixed-price contracts under which the Government will provide progress payments based on costs. A different customary rate for other than small business concerns may be substituted in accordance with FAR 32.501-1 for the progress payment and liquidation rate indicated.

(b) If an unusual progress payment rate is approved for the prime contractor (see FAR 32.501-2), the rate approved shall be substituted for the customary rate in paragraph (a)(1).

(c) If the liquidation rate is changed from the customary progress payment rate (see FAR 32.503-8 and FAR 32.503-9), the new rate shall be substituted for the rate in paragraphs (a)(4), (a)(5), and (b).

(d) If advance and progress payments are authorized in the same contract, the words "less any unliquidated advance payments" may be deleted from paragraph (a)(4) of this clause.

(e) If an unusual progress payment rate is approved for a subcontract (see FAR 32.504(b) and FAR 32.501-2), subparagraph (j)(4) shall be modified to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

PROGRESS PAYMENTS (JAN 1986) (DEV.)

Progress payments shall be made to the Contractor when requested as work progresses, but not more frequently than monthly in amounts approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.*

(1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) eighty percent (80%) of the Contractor's cumulative total costs under this contract, as shown by records maintained by the Contractor for the purpose of obtaining payment under Government contracts, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205-10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) The following conditions apply to the timing of including costs in progress payment requests:

(i) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(ii) Costs for the following may be included when incurred, even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(A) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract.

(B) Direct labor, direct travel, and other direct in-house costs.

(C) Properly allocable and allowable indirect costs.

(iii) Accrued costs of Contractor contributions under employee pension, profit sharing, and stock ownership plans shall be excluded until actually paid unless—

(A) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(B) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contributions remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(iv) If the contract is subject to the special transition method authorized in Cost Accounting Standard (CAS) 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objective, General and Administrative expenses (G&A) shall not be included in progress payment requests until the suspense account prescribed in CAS 410 is less than—

(A) Five million dollars ($5 million); or

(B) The value of the work-in-process inventories under contracts entered into after the suspense account was established (only a pro rata share of the G&A allocable to the excess of the inventory over the suspense account value is includable in progress payment requests under this contract).

(3) The Contractor shall not include the following in total costs for progress payment purposes in subparagraph (a)(1)(i) above:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(4) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(5) The total amount of progress payments shall not exceed eighty percent (80%) of the total contract price.

(6) If a progress payment or the unliquidated progress payments exceed the amounts permitted by subparagraphs (a)(4) or (a)(5) above, the Contractor shall repay the amount of such excess to the Government on demand.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or eighty percent (80%) of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) below).

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) above, and that rate is less than the progress payment rate stated in subparagraph (a)(1) above.

(d) *Title.*

(1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or

should have been allocable or properly chargeable to this contract.

(2) "Property", as used in this clause, includes all of the below-decribed items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

(i) Parks, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under subparagraph (ii) above; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract, e.g., the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of Loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of Costs and Property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and Access to Records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special Terms Regarding Default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of Rights.*

(1) No payment or vesting of title under this clause shall (i) excuse the Contractor from performance of obligations under this contract or (ii) constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under the clause (i) shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract and (ii) shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Progress Payments to Subcontractors.* The amounts mentioned in (a)(1)(ii) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to (i) the unliquidated remainder of progress payments made plus (ii) for small business concerns any unpaid subcontractor requests for progress payments that the Contractor has approved for current payment in the ordinary course of business.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately six (6) months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four (4) months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of the clause 52.232–16, Progress Payments, of the Federal Acquisition Regulation (or that clause with its Alternate I for any subcontractor that is a small business concern);

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Activity, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(7) The Contractor shall pay the subcontractor's progress payment request under subparagraph (j)(1)(ii) above, within a reasonable time after receiving the Government progress payment covering those amounts.

(8) To Facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in Subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on Undefinitized Contract Actions.* Nothwithstanding any other progress payment provision in this contract, progress payments may not exceed eighty percent (80%) of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in FAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a), and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b), progress payments for undefinitized contract actions shall be liquidated at eighty percent (80%) of the amount invoiced for work performed under the undefinitized contract

action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed eighty percent (80%) of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(End of Clause)

Alternate I (Jan 1986)

If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of ninety percent (90%) for small business concerns (see FAR 32.501–1), delete subparagraphs (a)(1) and (a)(2) from the basic clause, and substitute the following subparagraphs (a)(1) and (a)(2):

(a) *Computation of amounts.*

(1) Unless the Contractor requests a smaller amount, each progress payment shall be computed as (i) ninety percent (90%) of the Contractor's total costs incurred under this contract whether or not actually paid, plus (ii) progress payments to subcontractors (see paragraph (j) below), all less the sum of all previous progress payments made by the Government under this contract. Cost of money that would be allowable under 31.205–10 of the Federal Acquisition Regulation shall be deemed an incurred cost for progress payment purposes.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid thirty (30) days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs of for progress payments until paid).

Alternate II (Jan 1986)

If the contract is a letter contract, add paragraphs (l) and (m) shown below: The amount specified in paragraph (m) shall not exceed eightly percent (80%) applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(l) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b), be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government shall allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and shall liquidate each portion under the relevant procedure in subparagraphs (1) and (2) above.

(4) If the method of liquidating progress payments provided above does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(m) The amount of unliquidated progress payments shall not exceed . . . . . *(specify dollar amount).*

[FR Doc. 86–3867 Filed 2–20–86; 8:45 am]
BILLING CODE 3810–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–169 (Sub-1)]

Automatic Expansion of Zone of Rate Freedom for Motor Common Carriers of Property and Freight Forwarders

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Motor Carrier Act of 1980 permits motor common carriers of property and freight forwarders to reduce or increase rates within a 10 percent zone of rate freedom (ZORF) without investigation, suspension, revision, or revocation on the grounds that the changed rate is unreasonable because it is too high or too low. The Commission can increase the zone by up to five percentage points during any one-year period if it finds that there is sufficient actual and potential competition to regulate rates and that carriers or freight forwarders, shippers, and the public will benefit from increased rate flexibility.

In Ex Parte No. MC–169, *Expansion of Zone of Reasonableness,* 367 I.C.C. 907 (1984), the Commission exercised its authority to expand the ZORF by increasing the zone to 15 percent. As a result of that decision, motor common carriers of property and freight forwarders may now reduce or increase rates by up to 15 percent without Commission interference. The Commission now proposes a rule that for each future year makes a five percent increase in the ZORF automatic in the absence of Commission action to the contrary. Adoption of this proposal will require revision of the rules established by the Commission in Docket No. 37416, *Identification of Rates Filed Under Zone of Rate Freedom By Motor Common Carriers of Property and Freight Forwarders* (not printed), decided July 15, 1980, as amended in Ex Parte No. MC–169, *supra,* which set forth the manner in which carriers must notify the Commission when they wish to have rates considered under the zone.

DATE: Comments are due March 24, 1986.

ADDRESS: Send comments (original and 15 copies) to: Ex Parte No. MC–169 (Sub–No. 1), Rm. 1312, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard L. Arnaiz, (202) 275–7831, or Howell I. Sporn, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Energy and Environmental Considerations

This action does not appear to affect significantly the quality of the human environment or conservation of energy resources.

Regulatory Flexibility Analysis

This action will not have a significant economic impact on a substantial number of small entities because we are only affecting the timing of the approval of the ZORF increase

List of Subjects in 49 CFR Part 1312

Buses, Freight, Freight Forwarders, Maritime Carriers, Motor carriers, Passengers vessels, Pipelines, Railroads.

Decided: February 11, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

Appendix

Part 1312 is proposed to be amended as follows:

PART 1312—[AMENDED]

1. The authority citation for Part 1312 is revised to read as follows:

Authority: 49 U.S.C. 10708(d)(2) and 10762; 5 U.S.C. 553.

2. Paragraphs (b)(7) (ii), (iii) and (iv) of § 1312.4 are proposed to be revised to read as follows:

§ 1312.4 Filing tariffs.

* * * * *

(b) *Letters of transmittal.* * * *

(7) * * *

(ii) If the application of the proposed rate, charge, or provision would result in an increase in charges, the letter shall state that the proposed increase in the aggregate is not more than 15 percent[1] above that in effect 1 year prior to the effective date of the proposed increase.

(iii) If the application of the proposed rate, charge, or provision would result in a reduction in charges, the letter shall state that the proposed reduction in the aggregate shall be no more than 15 percent[1] below the lesser of that in effect on July, 1, 1980 (or the date, if after July 1, 1980, on which a rate, charge, or provision first became effective for a service not provided by the freight forwarder, or the carrier, on July 1, 1980), or that in effect 1 year prior to the effective date of the proposed reduction.

(iv) The carrier or freight forwarder will also be required in the letter to certify that the rates or provisions do not exceed the amount allowed by section 10708(d)(3)(A or B); and that the rates or provisions fall within the 15 percent[1] zone; also, if the rate is more than 15 percent[1] above the rate in effect one year earlier, to include in the statement whether the proposed rate has been subject to general rate increases during the previous year, what percent increase was taken, the bureaus which published the increase, and the effective date.

* * * * *

[FR Doc. 86-3747 Filed 2-20-86; 8:45 am]

BILLING CODE 7035-01-M

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[1] Commencing of [effective date of the rule change] and at the end of each one-year period thereafter, this percentage shall be automatically increased by 5 percentage points, in the absence of Commission action to the contrary. In addition, the applicable percentage shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the one-year period prior to the effective date of the proposed rate. (49 U.S.C. 10708(d)(3)(B).

Notices

Federal Register
Vol. 51, No. 35
Friday, February 21, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-402]

Adoption of a Final Environmental Impact Statement for Animal Damage Control

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Adoption of the Final Environmental Impact Statement for Animal Damage Control (ADC).

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) of the Department of Agriculture (USDA) gives notice that it intends to adopt the Final Environmental Impact Statement (FEIS) prepared by the Fish and Wildlife Service of the U.S. Department of the Interior (USDI) for the ADC program.

ADDRESS: Requests for a copy of the FEIS should be addressed to the Animal Damage Control Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 600A, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: John R. Wood, Environmental Coordinator, 301-436-8896.

SUPPLEMENTARY INFORMATION: On June 29, 1979, The Fish and Wildlife Service of the USDI published in the **Federal Register** (44 FR 38005), a notice of the availability of the FEIS on the ADC program. The ADC program was transferred to APHIS on December 19, 1985, by Pub. L. 99-190, 465. Since the FEIS complies with 40 CFR Part 1500-17, and since the transferred ADC activities are substantially the same as those previously administered by USDI, APHIS will recirculate it as a final statement in accordance with 40 CFR 1502.19 and 1506.3(b) and will adopt the FEIS for the ADC program.

Done at Washington, DC, this 19th day of February.

Bert W. Hawkins,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 86-3920 Filed 2-20-86; 8:45 am]
BILLING CODE 3410-34-M

Forest Service

Pesticide Use for Mountain Pine Beetle Control; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to use pesticides to control mountain pine beetle in the Homestake, Delmoe Lake, and Elder Creek campgrounds and picnic areas on the Deerlodge National Forest.

A range of alternatives will be considered including alternate methods of mountain pine beetle control and a no action alternative.

Federal, state, and local agencies; other individuals; and organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. The process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

Frank Salomonsen, Forest Supervisor, Deerlodge National Forest, Butte, Mountana is the responsible official.

The analysis is expected to take about four months. The draft environmental impact statement should be available for public review by March, 1986. The final environmental impact statement is scheduled to be completed by June, 1986.

Written comments and suggestions concerning the analysis should be sent to Frank Salomonsen, Deerlodge National Forest, Butte, Montana 59701, by March 3, 1986.

Questions about the proposed action and environmental impact statement should be directed to Roger Siemens, Jefferson District Ranger, Deerlodge National Forest, phone 406-287-3223.

Dated: February 12, 1986.

Frank E. Salomonsen,
Forest Supervisor.

[FR Doc. 86-3762 Filed 2-20-86; 8:45 am]
BILLING CODE 3410-11-M

Soil Conservation Service

Cobb Brook Watershed, MA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cobb Brook Watershed, Bristol County, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Rex Tracy, State Conservationist, Soil Conservation Service, 451 West Street, Amherst, Massachusetts 01002, telephone (413) 256-0441.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Rex Tracy, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for reducing flood damages in the West Water Street industrial area along Cobb Brook in the City of Taunton. The planned works of improvement consists of the realignment of the lower end of Cobb Brook where it flows under an industrial plant and through a series of deteriorated, inadequately sized pipes and culverts into a new 825-foot long closed culvert to be constructed through industrial land.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and

interested parties. Copies of the FONSI are available to fill single copy requests at the above address. The environmental assessment is on file and may be reviewed by contacting Rex Tracy.

No administrative action on implementation of the proposal will be taken until March 24, 1986.

(This activity is listed in the Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: February 11, 1986.

Rex Tracy,

State Conservationist.

[FR Doc. 86-3760 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-16-M

Environmental Statement; Chunky River Watershed, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Chunky River Watershed, Newton and Neshoba Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: A. E. Sullivan, State Conservationist, Soil Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601-965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, A.E. Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a supplemental plan for watershed protection. The planned works of improvement include accelerated financial and technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting A.E. Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials

Dated: February 13, 1986.

A.E. Sullivan,

State Conservationist.

[FR Doc. 86-3744 Filed 2-20-86; 8:45 am]

BILLING CODE 3410-16-M

COMMISSION ON CIVIL RIGHTS

California Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission originally scheduled for February 28, 1986, convening at 7:00 p.m. and adjourning at 9:00 p.m., at the U.S. Commission on Civil Rights, 3660 Wilshire Blvd., Room 810, Los Angeles, California (FR Doc 86-2819, Page 4947) has been cancelled.

Dated at Washington, DC, February 14, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3768 Filed 2-20-86; 8:45 am]

BILLING CODE 6335-01-M

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m., on March 11, 1986, at the Plainfield City Hall, Library Conference Room, 515 Watchung Avenue, Plainfield, New Jersey. The purpose of the meeting will be to plan community forum on the racially motivated incidents that have occurred in Maplewood and South Orange.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Stephen Balch or Ruth Cubero, Director of the Eastern Regional Office at (212) 264-0400 (TDD 212/264-0400). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 14, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3769 Filed 2-20-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission originally scheduled for February 20, 1986, convening at 1:00 a.m. and adjourning at 4:30 a.m., at the Christ Church United Methodist Building, Quarrier and Morris Streets, Charleston, West Virginia (FR Doc 86-1968, Page 3816) has been cancelled.

Dated at Washington, DC, February 14, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3771 Filed 2-20-86; 8:45 am]

BILLING CODE 6335-01-M

West Virginia Advisory Committee; Meeting Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission originally scheduled for February 20, 1986, convening at 9:00 a.m. and adjourning at 11:00 a.m., at the KB & T Center, Wheath First Securities, 10th Floor Conference Room, 500 Virginia Street, Charleston, West Virginia (FR Doc 86-1968, Page 3816) has been cancelled.

Dated at Washington, DC, February 14, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-3770 Filed 2-20-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-429-101]

Unrefined Montan Wax From the German Democratic Republic; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke.

SUMMARY: The Department of Commerce has conducted an administrative review of the antidumping duty order on unrefined montan wax from the German Democratic Republic. The review covers the one known exporter of this merchandise to the United States and the period September 1, 1983, through April 30, 1984. The review indicates the existence of no dumping margins during the period.

As a result of the review the Department intends to revoke the order. Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: February 21, 1986.

FOR FURTHER INFORMATION CONTACT: Laurie A. Lucksinger or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18343) a tentative determination to revoke the antidumping duty order on unrefined montan wax form the German Democratic Republic ("GDR") (46 FR 45177, September 10, 1981). On June 22, 1984, the Department published in the **Federal Register** (49 FR 25654) the final results of its last administrative review of the antidumping duty order. We received a request for an administrative review from an importer in accordance with § 353.53a(a) of the Commerce Regulations, and we published a notice of initiation of antidumping and countervailing duty administrative reviews in the **Federal Register** (50 FR 48825, November 27, 1985).

Scope of the Review

Imports covered by the review are shipments of unrefined montan wax, which is a non-oxidized mineral extracted from lignite, not advanced beyond extraction or cleaning by solvent. This product is primarily used as a flow agent in one-time carbon ink formulas. It is also used for producing polishes, mold release agents and for casting, and is currently classifiable under item 494.2000 of the Tariff Schedules of the United States Annotated.

The review covers the one known exporter of unrefined montan wax from the GDR to the United States, VEB Braunkohlenwerk "Gustav Sobottka," and the period September 1, 1983, through April 30, 1984.

United States Price

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act of 1930 ("the Tariff Act"). Purchase price was based on the f.o.b. price to unrelated purchasers in the United States, with deductions, where applicable, for foreign inland freight and harbor charges. No other adjustments were claimed or allowed.

Foreign Market Value

Since the economy of the GDR is state-controlled, the Department used the provisions in section 773(c) of the Tariff Act to establish foreign market value. We constructed a value based on specific components or factors of production in the GDR, valued on the basis of prices in the Federal Republic of Germany, a country with a non-state-controlled economy. For purposes of the review we constructed a value for unrefined wax, equal to the sum of materials, fabrication costs, general expenses, profit and the cost of packing. The amount added for general expenses constituted at least ten percent of the sum of materials and fabrication costs. We used the statutory minimum for profit as provided for in section 773(e) of the Tariff Act.

Preliminary Results of the Review and Intent To Revoke

As a result of our review, we preliminarily determine that no dumping margins exist for the period.

Consequently, we intend to revoke the order on unrefined montan was from the GDR. VEB Braunkohlenwerk "Gustav Sobottka" made all sales at not less than fair value during the period September 1, 1981, through April 30, 1984, the date of our tentative determination to revoke. As provided for § 353.54(e) of the Commerce Regulations, VEB Braunkohlenwerk "Gustav Sobottka" has agreed in writing to an immediate suspension of liquidation and reinstatement of the order under circumstances as specified in the written agreement. If this revocation is made final it will apply to all unliquidated entries of this merchandise entered, or withdrawn from warehouse for consumption on or after April 30, 1984.

Interested parties may submit written comments on these preliminary results and intent to revoke within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of any such comments or hearing.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries.

This administrative review, intent to revoke, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)) and § 353.53a and 353.54 of the Commerce Regulations (19 CFR 353.53a; 50 FR 32556, August 13, 1985; 353.54).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

February 13, 1986.

[FR Doc. 86-3806 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-201-404]

Bars and Shapes From Mexico; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Commerce.

ACTION: Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty order on bars and shapes from Mexico. The review covers the period from October 1, 1984. The petitioner has notified the Department that it is no longer interested in the countervailing duty order. This affirmative statement of no interest from a domestic interested party provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all bars and shapes from Mexico entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Bernard Carreau or Stephen Nyschot, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 32887) a countervailing duty order on bars and shapes from Mexico.

The petitioner, the Labor-Management Committee for Fair Foreign Competition, Inc., informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of Mexican certain deformed concrete reinforcing bars, hot-rolled carbon steel bars, and hot-rolled carbon steel bar-size shapes. For a further description of these products, see Appendix A of this notice. The review covers the period from October 1, 1984.

Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested party's affirmative statement of no interest in continuation of the countervailing duty order on bars and shapes from Mexico provides a reasonable basis for revocation of the order. In light of the October 1, 1984 effective date for revocation requested by the domestic party, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on bars and shapes from Mexico effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

Appendix A—Product Description

1. The term "certain deformed concrete reinforcing bars" covers hot-rolled steel bars, of solid cross-section, having deformations of various patterns on their surfaces, as currently provided for in items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated (TSUSA).

2. The term "hot-rolled carbon steel bars" covers hot-rolled carbon steel products of solid section not conforming completely to the respective specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet pads, wire rods, plates, sheets, strip, wire, rails, joint bars or tie plates which have cross-sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons or octagons, as currently provided for in items 606.8310, 606.8330, 606.8350, and 606.8600 of the TSUSA. Includes flat hot-rolled carbon steel products in coils or cut to length with a width of 8 inches or less and a thickness of 0.1875 inch or more.

3. The term "hot-rolled carbon steel bar-size shapes" covers hot-rolled carbon steel angles, shapes and sections, not drilled, not punched and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule G, Part 2, Subpart B of the TSUSA for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates or any tubular products set forth in the TSUSA having a maximum cross-sectional dimension of less than 3 inches, as currently provided for in items 609.8050, 609.8070 and 609.8090. This definition includes carbon steel angles, channels, special sections and other assorted carbon steel shapes with a maximum cross-sectional dimension of less than 3 inches.

This notice does not cover unliquidated entries of bars and shapes from Mexico which were entered, or withdrawn from warehouse, for comsumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: February 13, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–3807 Filed 2–20–86; 8:45 am]

BILLING CODE 3510–DS–M

Johns Hopkins University School of Medicine et al.; Consolidated Decision of Applications for Duty-Free Entry of Scientific Articles

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of

applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 85–095. Applicant: The Johns Hopkins University School of Medicine, Baltimore, MD 21205. Instrument: Gas Chromatograph/Mass Spectrometer System, Model MS 80. Date of denial without prejudice to resubmission: September 24, 1985.

Docket No.: 84–138. Applicant: Stanford University, Palo Alto, CA 94304. Instrument: Excimer Laser/Excimer-Pumped Dye Laser, Model EMG 203/FL 2002. Date of denial without prejudice to resubmission: November 20, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

[FR Doc. 86–3808 Filed 2–20–86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Enterprise Development Week; Meetings

AGENCY: Minority Business Development Agency.

ACTION: Notice of Meeting.

SUMMARY: This Notice sets forth a schedule of public meetings. The purpose of these meetings is to obtain public input in planning Minority Enterprise Development Week (MED Week), 1986.

DATES: Meetings will be held the fourth Tuesday of every month from February through September, 1986. For further information and/or confirmation call Hattie M. Bickmore, (202) 377–5196.

ADDRESS: Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Madonna Bradley (202) 377–5196 or 377–3717.

SUPPLEMENTARY INFORMATION: Under Executive Order 11625, MBDA is charged with promoting the development of minority business enterprise. The Third Annual Celebration of MED Week will aid in achieving this goal by providing the Agency with a means of recognizing the contributions made by minority entrepreneurs.

The purpose of these meetings is to obtain public input in the planning of MED Week, 1986. We are seeking the input of individuals who work closely with minority entrepreneurs or are assisting in the development and expansion of the Nation's minority-owned businesses, that will enable us to put together a program which will address the needs of minority business.

Dated: January 30, 1986.

Hattie M. Bickmore,

National Coordinator for MED Week.

[FR Doc. 86–3775 Filed 2–20–86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Civil Designs, Inc.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeals.

On February 3, 1986, Civil Designs, Inc. filed a notice of appeal with the Secretary of Commerce (Secretary) under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A). The appeal is taken from an objection by the Massachusetts Coastal Zone Management Office (MCZM), which found that Civil Designs' alteration of a marina in Quincy was inconsistent with the Massachusetts Coastal Zone Management Program. Specifically, MCZM found that two retaining walls were built and approximately 3300 square feet of fill were placed in wetland without appropriate federal, state or local permits.

Civil Designs has been granted a 15-day extension of time to file supporting information in its appeal. When this information has been supplied, MCZM will have thirty days to respond.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney/Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, 2001 Wisconsin Avenue, NW., Washington, DC 20235; 202/254–7512.

Dated: February 13, 1986.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration]

James W. Brennan,

Deputy General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 86–3763 Filed 2–20–86; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Cotton and Man-Made Fiber Textile Products, Produced or Manufactured in Portugal

February 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1986. For further information contact Ann Fields International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On December 19, 1985, a notice was published in the **Federal Register** (50 FR 51741) which announced that, on October 31, 1985 the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of cotton yarn-dyed fabrics in Category 310/318 and acrylic yarn in Category 604pt. (only TSUSA Number 310.5049), produced or manufactured in Portugal and exported during the twelve-month period which began on October 31, 1985 and extends through October 30, 1986. Inasmuch as no solution has been reached in consultations on mutually satisfactory limits for these categories, the United States Government has decided to control imports in Category 310/318 and in Category 604pt. (only TSUSA Number 310.5049), exported during the twelve-month period which began on October 31, 1985 at levels of 6,735,536 square yards and 573,563 pounds, respectively.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the tariff

schedules of the United States annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 18, 1986

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 24, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 310/318 and 604pt., produced or manufactured in Portugal, in excess of the following levels of restraint:

Category	12-mo restraint level [1]
310/318	6,733,536 square yards.
604pt.[2]	573,563 pounds.

[1] The levels have not been adjusted to account for any imports exported after October 30, 1985. Charges for Category 604pt. for the period November 1985 through December 1985 are 39,115 lbs; charges for Category 310/318 for the period November 1985 through December 1985 are 309,516 square yards.
[2] In Category 604pt., only TSUSA Number 310.5049.

Textile products in Categories 310/318 and 604pt. which have been exported to the United States prior to October 31, 1985 shall not be subject to this directive.

Textile products in Categories 310/381 and 604pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the tariff schedules of the United States annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-3810 Filed 2-20-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Wool Textile Products, Produced or Manufactured in Portugal

February 18, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on February 24, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On December 19, 1985, a notice was published in the **Federal Register** (50 FR 51741) which announced that, on November 25, 1985 the Government of the United States had requested the Government of Portugal to enter into consultations concerning exports to the United States of wool trousers in Category 448, produced or manufactured in Portugal and exported during the twelve-month period which began on November 25, 1985 and extends through November 24, 1986. Inasmuch as no solution has been reached in consultations on a mutually satisfactory limit for this category, the United States Government has decided to control imports in Category 448, exported during the twelve-month period which began on November 25, 1985 at a level of 9,916 dozen.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Portugal, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754, November 9, 1984 (49 FR 44782, and in statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Anotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

February 18, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 24, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in Portugal, and exported during the twelve-month period which began on November 25, 1985 and extends through November 24, 1986, in excess of the following level of restraint:

Category	12-mo restraint level [1]
448	9,916 dozen.

[1] The level has not been adjusted to reflect any imports exported after November 24, 1985. Charges for Category 448 for November 25, 1985 through December 31, 1985 are 648 dozen.

Textile products in Category 448 which have been exported to the United States prior to November 25, 1985 shall not be subject to this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709) as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-3809 Filed 2-20-86; 8:45 am]

BILLING CODE 3510 DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERLY HANDICAPPED

Procurement List 1986; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1986 commodities and services to be provided by workshops for the blind and other severely handicapped.

DATE: Comments must be received on or before: March 26, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodities

Bag, Carrying, 8465-01-216-6259
Mat, Sleeping, Cold Weather, 8465-01-109-3369

Service

Subtechnical Support Services, Naval Air Rework Facility, Building V-88, Norfolk, Virginia

Deletion

It is proposed to delete the following service from Procurement List 1986, October 15, 1985 (50 FR 41809):
Commissary Shelf Stocking and Custodial, Fort Monmouth (Ocean Port), New Jersey.

C.W. Fletcher,

Executive Director.

[FR Doc. 86-3837 Filed 2-20-86; 8:45 am]

BILLING CODE 6820-33-M

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange; Five-Year U.S. Treasury Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as a contract market in the Five-Year U.S. Treasury Index ("FYTR"). The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before April 22, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE FYTR futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254-7227.

Copies of the terms and conditions of the proposed NYCE FYTR futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE in support of its application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contract, or with respect to other materials submitted by the NYCE in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, 20581, by April 22, 1986.

Issued in Washington, DC on February 14, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-3723 Filed 2-20-86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 42, Related Clauses in Part 52.242 and related forms.

Information concerns certain information required to support certain contract administration requirements including unique requirements related to the acquisition of petroleum products.

Reporting is required for bid evaluation purposes and production maintenance purposes.

Businesses or others for profit/small businesses or organizations.

Responses: 17,054.

Burden hours: 9,102.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Managment and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3776 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding he information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 51, Related Clauses in Part 52.251 and related forms.

Information principally concerns certain data required to enable the processing of contractors' requests to use government sources of supply.

Reporting is required to authorize use of government sources of supply.

Businesses or others for profit/small businesses or organizations.

Responses: 10,500.

Burden hours: 5,250.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3777 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 70, Related Clauses in Part 52.270 and related forms.

Information principally concerns certain data required to enable evaluation of offers to provide computer resources.

Reporting is required for bid evaluation purposes and contract management.

Businesses or others for profit/small businesses or organizations.

Responses: 6,362.

Burden Hours: 127,240.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3778 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 44, Related Clauses in part 52.244 and Related Forms.

Information concerns subcontracting matters including contractor's purshasing system reviews.

Reporting is required to process approvals of contractors' subcontract systems.

Businesses or others for profit/small businesses or organizations.

Responses: 2,500.

Burden Hours: 44,400.

ADDRESSES: Comments are to be fowarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000,

telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3779 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Appendix I, DD 250 Series Forms.

Information principally concerns certain data required to inspect and accept materials and pay contractors.

Reporting is required for material inspection, acceptance purposes, and payment of contractors.

Businesses or others for profit/small businesses or organizations.

Responses: 1,640,416.

Burden Hours: 956,909.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3780 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD far supplements Part 36, Related Clauses in Part 52, 236 and Related Forms.

Information principally concerns certain data required to enable evaluation and administration of construction and A–E contracts.

Reporting is required for bid evaluation purposes and contract administration.

Businesses or others for profit/small businesses or organizations.

Responses: 28,200.

Burden Hours: 290,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD (P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3781 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DOD FAR Supplements Part 29, Related Clauses in Part 52.229 and Related Forms.

Information principally concerns certain data required to enable evaluation of requests from overseas into-plane refueling contractors for reimbursement for nonrefundable taxes.

Reporting is required to authorize such reimbursements.

Businesses or others for profit/small businesses or organizations.

Responses: 372.

Burden Hours: 372.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone

(202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3782 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 12, Related Clauses in Part 52.212 and Related Forms.

Information principally concerns certain data required to support certain delivery requirements. These principally concern special requirements for the acquisition of fuels.

Reporting is required for bid evaluation purposes and production/delivery planning purposes.

Businesses or others for profit/small businesses or organizations.

Responses: 300.

Burden Hours: 5,625.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3783 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

Defense Logistics Agency Clause 52.210–9001.

Information concerns certain data required to process offers from contractors proposing to use government surplus material in contract performance.

Reporting is required to obtain information necessary to determine the condition and advisability of using such materials.

Reports do not cover matters required by the Service Contract Act.

Businesses or others for profit/small businesses or organizations.

Responses: 4,000.

Burden Hours: 1,000.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA. Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Dated: February 14, 1986.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–3784 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 35, Related Clauses in Part 52.235 and Related Forms.

Information principally concerns certain data required to enable evaluation of short form R&D proposals, and to obtain information concerning hazardous risks and indemnification matters.

Reporting is necessary as the data can only be obtained from contractor sources.

Businesses or others for profit/small businesses or organizations.

Responses: 13,100.

Burden Hours: 25,200.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000,

telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3785 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Appendix K.

Information principally concerns certain data required to provide additional support during the preaward survey process.

Reporting is required to support determination of contractor responsibility.

Businesses or others for profit/small businesses or organizations.

Responses: 10,600.

Burden Hours: 222,600.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3786 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 47 and Related Clauses in Part 52.247.

Information principally concerns certain data required to support evaluation of offers for transportation and related services contracts.

Reporting is required for such matters as assuring that insurance coverage is present and to process claims for damages, etc.

Businesses or others for profit/small businesses or organizations.

Responses: 64,700.

Burden Hours: 64,700.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone (202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3787 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following request for renewal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

DoD FAR Supplements Part 45, Related Clauses in Part 52.245 and Related Forms.

Information principally concerns certain data required to control and account for government furnished property furnished contractors.

Reporting is required for accountability purposes.

Businesses or others for profit/small businesses or organizations.

Responses: 161,000.

Burden Hours: 397,100.

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTAL INFORMATION: A copy of the information collection proposal may be obtained from Mr. Fred J. Kohout, ODASD(P)CPA, Room 3D116, Pentagon, Washington, DC 20301–8000, telephone

(202) 697–8334. This is a revision of an existing collection.

Linda M. Lanson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 14, 1986.

[FR Doc. 86–3788 Filed 2–20–86; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

February 10, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Unmanned Air Reconnaissance Vehicles will meet March 11–13, 1986, from 8:00 a.m. to 5:00 p.m. each day at Aeronautical Systems Division, Headquarters, Building 14, Area B, Wright Patterson, AFB, OH.

The purpose of this meeting is to receive briefings on and to discuss sensor, navigation, communications, and aircraft systems applicable to unmanned tactical reconnaissance systems.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–3764 Filed 2–20–86; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Advisory Board on International Education Programs; Meeting

AGENCY: National Advisory Board on International Education Programs.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the National Advisory Board on International Education Programs. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is also intended to notify the general public of their opportunity to attend.

DATE: March 10, 1986.

ADDRESS: Hyatt Arlington Hotel, 1325 Wilson Boulevard, Arlington, Virginia 22209–9990 (Hollow Square Conference Room).

FOR FURTHER INFORMATION CONTACT: Harry M. Gardner, Postsecondary Relations Staff, ROB–3, Room 3082, 400 Maryland Avenue, SW., Washington, DC 20202, (202/245–9700).

SUPPLEMENTARY INFORMATION: The National Advisory Board on International Education Programs is established under section 621 of the Higher Education Act of 1965, as amended, by the Education Amendments of 1980 (Pub. L. 96–374; 20 U.S.C. 1131). Its mandate is to advise the Secretary of Education on the conduct of programs under this title.

This meeting of the National Advisory Board on International Education Programs is open to the public. The agenda includes a review of the status of the reauthorization of Title VI of the Higher Education Act. In addition, it will include a review of the International Education Programs.

The meeting will be held from 9:00 a.m. to 4:30 p.m., the 10th of March at the Hyatt Arlington Hotel (the Hollow Square Conference Room), Arlington, Virginia.

Records are kept on the Board proceedings and are available for public inspection at the Office of Postsecondary Relations Staff, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets, SW., Room 3082, Washington, DC.

Signed at Washington, DC, on February 19, 1986.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 86–3909 Filed 2–20–86; 8:45 am]

BILLING CODE 4000–01–M

National Advisory Council on Adult Education; Closed Meeting

AGENCY: National Advisory Council on Adult Education, Education.

ACTION: Notice of closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES: February 23, 1986, 6:00 p.m. to 11:00 p.m.; February 24, 1986, 8:00 a.m. to 5:00 p.m.

ADDRESS: February 23, 1986, Gramercy Hotel, 1616 Rhode Island Ave., NW., Washington, DC 20036; February 24, 1986, 2000 L Street, NW., Room 555, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Helen Banks, National Advisory Council on Adult Education, 2000 L Street, NW., Suite 570, Washington, DC 20036, 202/634–6303.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under section 312 of the Adult Education Act (20 U.S.C. 1201). The Council is established to advise the Secretary on policy matters concerning the management of the Act, review program and administration effectiveness, and make reports and submit recommendations to the President and Congress relating to Federal adult education activities and services.

The Executive Committee meeting will be closed to the public to discuss staff performance and other related personnel matters. This review and subsequent discussions will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. Such matters are protected by exemptions (2) and (6) of section 552b(c) of Title 5 U.S.C., and under the authority of section 10(d) of the Federal Advisory Committee Act.

The public is being given less than fifteen days notice of this closed meeting due to the exceptional emergency nature of the situation, and scheduling dates to correspond with the Executive Committee.

A summary of the activities of the closed meeting and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Signed at Washington, DC, on February 14, 1986.

Lynn Ross Wood,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 86–3751 Filed 2–20–86; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER86–289–000, et al.]

Electric Rate and Corporate Regulation Filings; Pennsylvania Power and Light Co. et al.

February 12, 1986.

Take notice that the following filings have been made with the Commission:

[Docket No. ER86-289-000]

1. Pennsylvania Power and Light Co.

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on February 7, 1986 an executed Power Supply Agreement dated as of February 4, 1986 between PP&L and Allegheny Electric Cooperative, Inc. (Allegheny). Under this agreement, PP&L provides wholesale electric service to Allegheny for the benefit of Sullivan County Rural Electrical Cooperative.

PP&L requests an effective date of February 12, 1986, and therefore requests waiver of the Commission's notice requirements of section 205 of the Federal Power Act, 16 U.S.C. 824d, and § 35.3 of the Commission's regulations, 18 CFR § 35.3.

Copies of this filing have been served upon Allegheny and the Pennsylvania Public Utility Commission.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Co.

[Docket No. ER82-427-000, ER83-301-000, ER84-75-000]

Take notice that on January 30, 1986, Southern California Edison Company tendered for filing the following data:

A. Summary of all securities issued between October 1, 1985, and December 31, 1985.

B. Summary of its fourth Quarter 1985 construction budget.

C. Mergers, consolidations, or other major changes in the utility's corporate organization.

D. Fourth quarter 1985 capital structure information.

E. Copies of all orders issued and applications submitted between October 1, 1985 and December 31, 1985.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. EL86-21-000]

Take notice that on February 3, 1986, city of Vernon, California (Vernon) submitted for filing a petition for declaratory order pursuant to Rule 702(a)(2) of the Commission's Rules of Practice and Procedure. The relief that Vernon seeks is more fully stated as follows:

• A declaratory order reciting that (a) effective as of February 1, 1986, Vernon is entitled under the Integrated Operations Agreement (IOA) to receive capacity and energy from Vernon's interest in Palo Verde Nuclear Generating Station, Unit No. 1 (PVNGS 1) to displace capacity and energy purchases by Vernon from Edison under Edison's partial requirements rate schedule; (b) as of that date, Edison is required to perform services provided for in the IOA in connection with integrated operations of such Vernon capacity resource, including transmission services and scheduling and dispatching services; and (c) such date, February 1, 1986, shall be deemed the date of firm operation of Vernon's PVNGS 1 interest for all purposes under the IOA.

• An order on Vernon's complaint directing Edison to tender an appropriate transmission service agreement and supplemental agreement for filing with the Commission pursuant to Section 205 of the Federal Power Act to implement all necessary procedural and mechanical arrangements for integration of Vernon's PVNGS 1 interest with a February 1, 1986 date of firm operation, with commencement of Vernon's capacity and energy credits as of that date, and reserving Vernon's right to contest and to litigate before the Commission any of the provisions of such agreements being tendered for filing.

• Expedited Commission processing of this pleading and a waiver of any applicable procedural requirements of the Commission's regulations in order to assure that Vernon receives appropriate and timely credits for its PVNGS 1 ownership interest under the Vernon-Edison IOA as aforesaid.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Manti City, Utah and the Utah Municipal Power Agency v. Utah Power and Light Co.

[Docket No. EL86-20-000]

Take notice that on February 3, 1986 Manti City, Utah and Utah Municipal Power Agency (UMPA) tendered for filing an application for orders pursuant to sections 210 and 211 of the Federal Power Act pursuant to Rule 204 of the Commission's Rules of Practice and Procedure (18 CFR 385.203).

The filing parties request the Commission order:

(1) Utah Power and Light (UP&L) to provide transmission service to Manti on a long-term basis under fair and reasonable terms and at non-discriminatory rates beginning on the later of February 4, 1986 or the date the Commission establishes for termination of the current UP&L/Manti Resale Electric Service Agreement which UP&L has informed Manti it intends to terminate as of February 4, 1986; or,

(2) UP&L to interconnect its transmission facilities with the facilities of UMPA and Manti under fair and reasonable terms and at non-discriminatory rates if the Commission deems such an interconnection necessary under PURPA beginning on the later of or the date the Commission establishes for termination of the current UP&L/Manti Resale Electric Service Agreement which UP&L has informed Manti it intends to terminate as of February 4, 1986; and

(3) Any other relief it deems appropriate.

Comment date: February 25, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3795 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Natural Gas Pipelines After Partial Wellhead Decontrol (United Cities Gas Co.); Order Denying Request for Clarification or Waiver

Issued: February 18, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 15, 1986, United Cities Gas Company (United Cities) filed an emergency request for clarification or waiver of the Commission's regulations to permit Southern Natural Gas Company (Southern) and Transcontinental Gas Pipe Line Company (Transco) to continue providing transportation service on behalf of United Cities pursuant to section 311(a)(1) of the Natural Gas Policy Act (NGPA).[1] Southern informed

[1] On January 23, 1986, United Cities filed an amendment to its emergency request.

United Cities that the section 311 arrangement would be terminated in the absence of an order clarifying that continuance of the arrangement would not subject Southern to the nondiscriminatory access requirements of Order No. 436.[2]

United Cities states that, under the extended transportation agreement, Southern (pursuant to section 311(a)(1) of the NGPA) and Transco (pursuant to a certificate sought in Docket No. CP86-202) will continue to aid United Cities in moving excess system supplies available in Columbus, Georgia to its distribution system in Gainsville, Georgia, where there are peak-day demand shortages for high-priority users. Southern and United Cities amended their transportation agreement on October 2, 1985 to provide for the continuation of Southern's transportation service for an additional two-year period ending January 11, 1988, but Southern's extension report was not filed with the Commission until October 10, 1985.

Section 284.105 of the regulations adopted by Order No. 436 provides for transitional treatment of existing 311 transportation arrangements if they were "authorized and commenced . . . on or before October 9, 1985 . . ." In order for an extension to be authorized on or before October 9, 1985, the extension report had to be filed by that date. This requirement must be met irrespective of whether the extension report satisfies the 90 day requirement of former section 284.106.[3] Accordingly, since the proposed extension of the section 311 arrangement was not authorized on or before October 9, 1985, it does not qualify for transition treatment under § 284.105.

We will also deny United Cities' alternative request for waiver. Southern's failure (either through clerical error, an oversight, or otherwise) to acquire authorization to extend the transaction by filing the extension report on or before October 9, 1985 does not justify extending the original authorization by waiver.[4]

[2] 33 FERC ¶ 61,007; 50 FR 42408 (October 18, 1985); Technical corrections, FERC Statues and Regulations ¶ 30,669, 50 FR 45907 (November 5, 1985).

[3] We note that, despite United Cities' initial concern, Southern's filing of the extension report met the requirements of former § 284.106, since the filing was received by the Commission on October 10, 1985, 90 days prior to the January 11, 1986 expiration of the transportation agreement between United Cities and Southern.

[4] The facts presented herein do not satisfy the "economic substance" exception set forth in Judel Glassware Company, Inc., 33 FERC ¶ 61,386 (1985), because there is no allegation of substantial expenditures or construction in reliance on the transportation agreement.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3797 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Natural Gas Pipelines After Partial Wellhead Decontrol (U.S. Steel); Order Denying Request for Clarification and Denying Waiver

Issued: February 13, 1986.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 10, 1986, United States Steel Corporation (U.S. Steel) filed a petition for clarification of the Commission's Order No. 436.[1] U.S. Steel states that on May 6, 1985, it entered into a transportation agreement with Natural Gas Pipeline Company of America (Natural) to transport up to 35,000 MMBtu of gas per day for end use at U.S. Steel's plant in Gary, Indiana. Transportation commenced on September 1, 1985, and continued until October 31, 1985, when it was interrupted by Natural after the issuance of Order No. 436.

U.S. Steel states, among other things, that although the contract references transportation authorization under § 157.209 (e)(1) and (e)(2) of the Commission's regulations, the gas would have qualified as high priority end-use gas. U.S. Steel requests clarification: (1) That the May 6, 1985 agreement is a valid agreement underlying transportation started before October 9, 1985; (2) that although the gas was transported under the automatic authorization in § 157.209(e)(1), the transportation was also automatically authorized under § 157.209(a)(1); and (3) that Natural may continue transporting the gas under the May 6, 1985 agreement pursuant to § 284.223(g)(1).

U.S. Steel states in its petition that approximately 43,000 MMBtu per day of gas is used for high-priority end uses, an amount in excess of the 35,000 MMBtu per day deliveries under the transportation arrangement. In our rehearing of *Midwest Solvents*,[2] involving a somewhat similar situation, we concluded that Midwest Solvents' transportation agreement qualified under § 157.209(a)(1) even though the pipeline had filed an application under the notice and protest procedures of § 157.209(e)(2). We do not, however, need to reach the question of whether the transportation here qualified for continuation under the rationale of *Midwest Solvents*. Even if the transportation arrangement qualified for transition treatment under § 284.223(g)(1), the term of the agreement has expired.

We disagree with U.S. Steel that its arrangement may qualify for transition treatment for a two-year term. Clause 8.1 of its agreement with Natural states, in revelant part, that:

> this Agreement shall be effective as of the date thereof, and shall be for a primary term of the lesser of one hundred twenty (120) days from the date of first deliveries at the Natural Receipt Point/s or the date upon which this transaction under § 157.209(e)(1), as amended from time to time, ceases, unless earlier terminated. *Following the receipt of the necessary regulatory authorization under* § 157.209(e) the primary term shall extend until two (2) years from the date of first delivery of gas hereunder at the Natural Receipt Point/s unless earlier terminated. (Emphasis added.)

This contract clause only provides contractual authorization for a period of 120 days from the date of first deliveries at the Natural receipt point(s). Since U.S. Steel and Natural never filed for and never received authorization under § 157.209(e)(2), their contract does not authorize transportation beyond this single 120 day period. Under § 284.223(g)(1), transportation authorized under § 157.209(a)(1) and commenced on or before October 9, 1985, is authorized "for the full term originally certificated" subject to the conditions in § 284.7. In this case, the full term originally certificated is a single 120 day period since the two year contract authorization never became effective.

Accordingly, even if the transportation qualified under § 284.223(g)(1), that provision would authorize Natural to transport gas to U.S. Steel only for the term of their agreement, *i.e.*, for a period not to exceed 120 days from the date of first deliveries at Natural's receipt point(s). Inasmuch as transportation under the contract commenced on September 1, 1985, the 120-day term of the contract has elapsed. Thus, the transportation arrangement would no longer qualify for transition treatment under § 284.223(g)(1).

Finally, U.S. Steel does not qualify for a waiver under our decision in *Judel Glassware Co., Inc.*, 33 FERC ¶ 61,386, 51 FR 434 (1986). In that order, we decided that applicants may qualify for a waiver of the transitional rules provided the applicants demonstrated that there was

[1] 33 FERC ¶ 61,157.

[2] 33 FERC ¶ 61,395.

"economic substance" to their transportation transactions prior to October 9, 1985. To demonstrate economic substance, the purchaser, seller, or end user must show that, in reliance on a transportation contract, it constructed significant facilities for delivery of gas prior to October 9, or expended substantial funds prior to October 9. *Judel, mimeo.* at 16. U.S. Steel has not demonstrated that it qualifies for a waiver because U.S. Steel does not allege that it expended substantial funds or constructed significant facilities in reliance on its agreement with Natural.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3798 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D) and Docket No. RM85-1-146]

Natural Gas Pipelines After Partial Wellhead Decontrol United Gas Pipe Line Co., Natural Gas Pipeline Co. of America and Delhi Gas Pipeline Corp.; Order Granting in Part and Denying in Part Requests for Clarification and Rehearing

Issued: February 18, 1986.

The Commission has issued two orders [1] granting clarification of Order No. 436 [2] with respect to transitional treatment of the transportation of gas to correct imbalances arising from transportation that was performed prior to October 31, 1985. Briefly, those orders permit a pipeline to correct such imbalances by February 15, 1986, without subjecting the transporter to the conditions in §§ 284.8, 284.9, 284.10 of our regulations.

On January 14, 1986, United Gas Pipeline Company filed a request for clarification or, alternatively, for waiver of the regulations adopted in Order No. 436. On January 16, 1986, Natural Gas Pipeline Company of America filed a request for rehearing and clarification of the clarification order issued in response to Natural or December 17, 1985.[3] These requests involve, *inter alia*, correction of imbalances that arise out of transportation transactions performed after October 31, 1985, pursuant to the transition provisions of Order No. 436.

Natural requests that the time period for correcting imbalances be extended to the later of (a) April 30, 1986, or (b) the last day of the third month following the date on which the authorized transportation arrangement terminates. It states that pipelines need at least three months to correct imbalances because the exact imbalance is not known until a month after the transportation arrangement terminates.

Natural also requests clarification on specific methods for correcting imbalances. It describes two ways in which these imbalances have traditionally been corrected in the past:

1. Volumes owed are credited as volumes delivered under an existing authorized transportation amendment, or another expired transportation arrangement in which the opposite imbalance exists; or
2. Volumes owed are delivered at a new delivery point.

It states that these two methods should be available for correcting imbalances if: (1) The imbalance volumes cannot practicably be delivered under the applicable contract; and (2) these methods are used soley to correct imbalances due to deliveries prior to the termination of the transportation arrangement.

United requests a similar clarification for correcting imbalances, including a request to extend the February 15, 1986 date for correcting imbalances. For inactive contracts, United requests a deadline of March 31, 1986. For active contracts (those authorized under § 284.105 and § 284.223(g)), it proposes a rolling time prior to 90 days from the date the contract terminates. United also requests clarification that it may correct imbalances by

1. Allocating the imbalance owed to the shipper/broker under one contract (the original nongrandfathered contract) to another, grandfathered (active) transportation contract between United and the same shipper.
2. Allocating the lock-in balance to one or more nongrandfathered (inactive) transportation contracts.

United also states that, in one instance, a final accounting resulted in a negative balance, i.e., a balance owed to United. However, the source of gas originally used by the shipper is insufficient to balance the account within a reasonable period of time. To repay that imbalance, the shipper must obtain additional supplies at new locations not described in the transportation agreement as it existed on October 9, 1985.

We agree with the applicants that, due primarily to operational problems and practical considerations, additional time may be needed in many instances to correct imbalances. For inactive contracts (those which have terminated or ceased to be authorized, under the transition rules, beyond October 31, 1985), we are permitting the parties to correct their imbalances by April 30, 1986.

With respect to active contracts, we agree that a rolling time period is the most appropriate manner for correcting imbalances. Therefore, we will permit the parties to correct the imbalances for a period extending 90 days from the date the transportation arrangement terminates.

With respect to the procedures for correcting the imbalances, we have stated in the *Natural* order that "deliveries or other types of adjustments" made solely for the purpose of correcting deliveries made on or prior to October 31, 1985, will not subject the pipeline to §§ 284.8, 284.9, 284.1). We entend this language to provide the parties with flexibility in selecting the method for correcting the imbalances, provided that is their sole purpose. We view this authorization merely as a short-lived problem associated with the implementation of Order No. 436. The methods which Natural and United have described in their pleadings are permissible, as are other methods which the Commission has authorized in the past for correcting imbalances, provided they are used for the stated purpose.

Finally, Natural and Delhi Gas Pipeline Corporation request rehearing of the ruling (Item 6) in the *Natural* order that extensions of contracts which are for a two-year initial term plus two-year extension periods qualify for transition treatment under § 284.105(a) only to the extent that the extensions were authorized on or before October 9, 1985. Natural states that since these extensions were contemplated in the contract, there is no reason to require that the extensions be authorized on or before October 9, 1985, especially since there is no opportunity to circumvent Order No. 436.

Delhi states that, for its affected transactions, Natural filed an extension report, as requested by Delhi, on October 15, 1985, but that its section 311 transportation will not qualify for the transitional rules since the authorization was not obtained on or before October 9, 1985. It contends, among other things, that the Commission should accord transition treatment to such arrangements because it will carry out the expectations of the parties without permitting any circumvention of Order No. 436.

Neither Natural nor Delhi has raised any new matters not previously considered in formulating and clarifying

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[1] *Natural Gas Pipeline Company*, 33 FERC ¶ 61,401, 54 FR 438 (1986); *Entrade Corporation*, 33 FERC ¶ 61,451, 51 FR 440 (1986).

[2] 33 FERC ¶ 61,007, 50 FR 41,408 (1985).

[3] Natural, *supra*.

Order No. 436.[4] The purpose of the transition rules is to permit transportation arrangements that were authorized and in effect as of October 9, 1985 to continue for a specified time period. Accordingly, Natural's and Delhi's request for rehearing on this issue is denied. Delhi's request for a waiver of this requirement also is denied, because it has not demonstrated any circumstances not applicable to other pipelines affected by Order No. 436.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3796 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-33-006]

El Paso Natural Gas Co.; Compliance; Purchased Gas Cost Adjustment Filing

February 14, 1986.

Take notice that on February 7, 1986, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with the Commission's order issued February 7, 1986 at Docket No. TA85-1-33-005, the following tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	First Substitute Sixth Revised Sheet No. 100.
Third Revised Volume No. 2	First Substitute Thirty-first Revised Sheet No. 1-D.
Original Volume No. 2A	First Substitute Thirty-second Revised Sheet No. 1-C.

The Commission's February 7, 1986 order denies El Paso's request for rehearing of the Commission's October 30, 1985 order in this proceeding. The October 30, 1985 order directed El Paso to reinstate $11,444,412 of unpaid accruals in Account 191 for purposes of calculating the surcharge effective October 1, 1985. Rejecting El Paso's arguments on the matter, the order denying rehearing requires El Paso to file revised tariff sheets to include the unpaid accrual amounts in its Account 191 balance effective October 1, 1985.

The filing reflects a $0.2882 per dth decrease in El Paso's rates as compared to the $0.3182 per dth decrease reflected in El Paso's September 30, 1985 PGA filing.

In accordance with the requirements set forth in ordering paragraph (B), El Paso has recalculated the unrecovered purchase gas cost surcharge included in its September 30, 1985 PGA filing to reflect the inclusion of $11,444,412 attributable to unpaid accruals. The revised balance in Account 191 for the block ended June 30, 1985 after such adjustment is $16,922,869. When the recalculated Account 191 balance of $16,922,869 is divided by El Paso's estimated jurisdictional sales of 381,244,387 dth for the six (6) month period commencing October 1, 1985, the deferred amount equates to a surcharge rate of $.0444 per dth in El Paso's rates which is a $0.0300 increase in those rates filed September 30, 1985.

El Paso also tendered for filing Substitute Thirty-third Revised Sheet No. 1-C to its FERC Gas Tariff, Original Volume No. 2A, effective December 1, 1985. By letter order dated December 27, 1985 issued at Docket No. CP84-718-001 by the Director of the Office of Pipeline and Producer Regulation, Thirty-third Revised Sheet No. 1-C was accepted and made effective December 1, 1985 and reflected the deletion of special Rate Schedules FS-25 through FS-30. Therefore, Substitute Thirty-third Revised Sheet No. 1-C is being tendered to be effective December 1, 1985.

Further, by order issued December 17, 1985 at Docket No. RP85-154-000 by the Director of the Office of Pipeline and Producer Regulation certain tariff sheets were made effective January 1, 1986 which reflected a 0.10¢ increase per dth in rates attributable to the increase in the Gas Research Institute Funding Unit Adjustment. That component of El Paso's rates thus rises from 1.18¢ per dth (1.25¢ per Mcf) to 1.28¢ per dth (1.35¢ per Mcf). El Paso tendered the following tariff sheets as part of El Paso's FERC Gas Tariff to be effective January 1, 1986 to reflect the change:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Substitute Seventh Revised Sheet No. 100.
Third Revised Volume No. 2	Substitute Thirty-second Revised Sheet No. 1-D.
Original Volume No. 2A	Substitute Thirty-fourth Revised Sheet No. 1-C.

El Paso respectfully requests waiver of Section 19 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 and, pursuant to § 154.51 of the Commission's Regulations, waiver of the notice requirements of § 154.22 of the Commission's Regulations and any other of the Commission's applicable rules, regulations and orders as may be necessary to permit the tendered revised tariff sheets, as described herein, to become effective on October 1, 1985, December 1, 1985, and January 1, 1986, respectively.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso, all interested state regulatory commissions and otherwise all parties of record in Docket No. TA86-1-33-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3799 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-53-003]

K N Energy, Inc.; Proposed Changes in FERC Gas Tariff

February 14, 1986.

Take notice that K N Energy, Inc. (K N) on January 31, 1986, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

Sixth Revised Sheet No. 26
Fifth Revised Sheet No. 26A
Fifth Revised Sheet No. 26B

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 7, 1986.

K N states that this filing is made in compliance with the Commission's order issued November 27, 1985, requiring the elimination of the effects of concurrent exchange imbalances from Account No. 191. K N states that it will institute the methodology recently approved by the Commission in a proceeding including United Gas Pipe Line Co.

Copies of this filing were served upon K N's jurisdictional customers and all parties to the proceeding.

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[4] *See, e.g., Western Gas Supply Company* and *Tennessee Gas Pipeline Company*, 34 FERC ¶ 61,036 (1986).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 21, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3800 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-14-002]

Lawrenceburg Gas Transmission Corp.; Proposed Change in FERC Gas Tariff

February 14, 1986.

Take notice that on February 11, 1986 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing two (2) substitute revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, both of which are dated as issued on February 10, 1986 proposed to become effective February 1, 1986 and, identified as follows:

Substitute Thirty-eighth Revised Sheet No. 4

Substitute Thirty-fourth Revised Sheet No. 18

Lawrenceburg states that its substitute revised tariff sheets were filed under its Purchased Gas Adjustment (PGA) Provision and to comply with the Commission's January 27, 1986 order in this docket that required Lawrenceburg to track any reduction in the rates being tracked of its pipeline supplier. On February 6, 1986, Texas Gas Transmission Corporation filed to reduce its February 1, 1986 PGA, prompting Lawrenceburg to refile its previously approved February 1, 1986 PGA.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3801 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-27-000, 001]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

February 15, 1986.

Take notice that North Penn Gas Company (North Penn) on February 10, 1986, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective March 1, 1986.

Specifically, North Penn has included in its semiannual PGA, to be effective March 1, 1986, the following:

1. A decrease of 19.056¢ per Mcf (Appendix A) to reflect changes in the cost of gas purchased.

2. A surcharge credit of 5.381¢ per Mcf (Appendix B) resulting from amounts accumulated in the Unrecovered Purchased Gas Cost Account for the period June 30, 1985 through December 31, 1985; the jurisdictional portion of supplier refunds received by North Penn for the same six-month period; carrying charges computed in accordance with the Federal Energy Regulatory Commission's (Commission) Regulations; and a carry-over balance from the surcharge credit effective for the period March 1, 1985 through August 31, 1985.

3. A TOP surcharge of 9.160¢ (Appendix C) to recover North Penn's funding of Take-or-Pay payments made to Tennessee Gas Pipeline Co. (Tennessee) under procedures approved by the Commission in Docket No. RP83-8 et al. issued April 16, 1985.

Included in North Penn's rates effective September 1, 1985, was a TOP Surcharge of 13.666¢. A reconciliation of actual TOP payments, including interest, with amounts recovered from its customers for the period September, 1985 through February, 1986, will be included in North Penn's next regularly scheduled semiannual PGA filing.

As part of this filing, North Penn has also included Thirteenth Revised Sheet No. 15H which reflects no incremental pricing surcharges under section 15 of the General Terms and Conditions of its tariff.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1986 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3802 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-167-003]

Sea Robin Pipeline Co.; Compliance Filing

February 14, 1986.

Take notice that on January 31, 1986, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheets to be a part of its FERC Gas Tariff, Original Volume No. 1:

Forty-Third Revised Sheet No. 4

Twenty-Third Revised Sheet No. 4-A

Original Sheet No. 4-C

Twenty-Sixth Revised Sheet No. 127-D

Twenty-Sixth Reviseds Sheet No. 135-C

Sea Robin requests an effective date of February 1, 1986, for these sheets.

Sea Robin states this filing is in compliances with Article III of the Stipulation and Agreement filed with the Commission on December 20, 1985, in Docket No. RP85-167 and that it implements the terms of the settlement agreement.

Sea Robin has served a copy of this filing on all participants listed on the official service list in this proceeding.

Any person desiring to be heard or to protest said filings should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3803 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-9-003]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Tariff Revisions

February 14, 1986.

Take notice that on January 29, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), tendered for filing the following revised tariff changes to First Revised Volume No. 1 of its FERC Gas Tariff to be effective January 1, 1986.

First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 7, 1986.

Tennessee states that the purpose of these revised tariff sheets is to restate on a dekatherm basis certain of the rates and charges reflected on tariff sheets submitted with its purchased gas adjustment filing in Docket No. TA86-2-9 and accepted by Commission order in that proceeding dated December 31, 1985. Further, Tennessee states that restatement on a dekatherm basis is in accord with Tennessee's filing on December 31, 1985 in accord with Commission Opinion Nos. 240 and 240-A.

Tennessee states that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 21, 1986 (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3804 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-141-006]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

February 14, 1986.

Take notice that Texas Gas Transmission Corporation (Texas Gas), on February 5, 1986 tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 and FPC Gas Tariff, Original Volume No. 2:

FERC Gas Tariff, Original Volume No. 1

Effective November 1, 1985

Substitute Original Sheet No. 1
Third Substitute Original Sheet No. 10
Original Sheet No. 10A
Third Substitute Original Sheet No. 11
Third Substitute Original Sheet No. 12
Substitute Original Sheet Nos. 15 thru 22
Original Sheet Nos. 22A and 22B
Substitute Original Sheet Nos. 23 thru 35, 40, 42, 44, 79, 88, 96, 106, and 107
Second Substitute Original Sheet No. 108
Substitute Original Sheet Nos. 109 thru 114
Second Substitute Original Sheet No. 115
Original Sheet Nos. 116 and 117
Substitute Original Sheet No. 118
Original Sheet Nos. 184 and 185

Effective December 1, 1985

Second Substitute First Revised Sheet No. 10
First Revised Sheet No. 10A

Effective January 1, 1986

Second Substitute Second Revised Sheet No. 10
Second Revised Sheet No. 10A
Substitute First Revised Sheet No. 11
Substitute First Revised Sheet No. 12

Effective February 1, 1986

Substitute Third Revised Sheet No. 10
Third Revised Sheet No. 10A

Effective February 5, 1986

First Revised Sheet Nos. 1, 51 thru 54
Original Sheet Nos. 55 and 56
First Revised Sheet No. 154

FPC Gas Tariff, Original Volume No. 2

Effective November 1, 1985

Second Substitute Fifth Revised Sheet No. 82
Third Substitute Twentieth Revised Sheet No. 333
Second Substitute Sixth Revised Sheet No. 547
Third Substitute Ninth Revised Sheet No. 643
Third Substitute Fifth Revised Sheet No. 919
Third Substitute Seventh Revised Sheet No. 982
Third Substitute Sixth Revised Sheet No. 1005

Effective January 1, 1986

Substitute Twenty-First Revised Sheet No. 333
Substitute Sixth Revised Sheet No. 919
Substitute Eighth Revised Sheet No. 982.

The revised tariff sheets are being filed in compliance with the "Order Approving Contested Offer Of Settlement Subject to Modifications" issued by the Federal Energy Regulatory Commission (Commission) on January 22, 1986, in Docket Nos. RP85-141-005 and RP85-141-002 (34 FERC Para. 61,054).

Texas Gas respectfully request a waiver of the requirements of Part 154 of the Commission's regulations under the Natural Gas Act to the extent necessary to permit all of the tariff sheets listed above to be accepted for filing and effective on the dates indicated.

Copies of this filing were served on all parties in Docket No. RP85-141, as well as nonintervenor customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or

protests should be filed on or before February 21, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-3805 Filed 2-20-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-18765-000 et al.]

Tenneco Oil Co. et al.; Applications for Certificates, Abandonments of Service and Petition To Amend Certificates

Correction

In the document beginning on page 5781 in the issue of Tuesday, February 18, 1986, make the following correction:

On page 5783, the file line was omitted and should have appeared as follows:

[FR Doc. 86-3469 Filed 2-14-86; 8:45 am]

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-2972-2]

California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an opportunity for public hearing.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its exhaust emission standards and test procedures governing the certification of heavy-duty vehicles and engines. California has requested EPA to determine that these amendments are within the scope of previous waivers granted to California pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). These amendments pertain to heavy-duty diesel vehicles and engines. However, EPA considers these to be, in effect, new standards and test procedures. This notice announces that EPA has tentatively scheduled a public hearing for March 27, 1986 to consider CARB's requests and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by March 17, 1986. If no party informs EPA that it wishes to testify on the heavy-duty amendments, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

DATES: EPA will hold a public hearing on March 27, 1986, beginning at 2:00 p.m., if any party notifies EPA by March 17, 1986, that it wishes to present oral testimony regarding CARB's requests. Any party may submit written comments regarding CARB's requests by April 26, 1986. ADDRESSES: EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), Marianas Room, 6th Floor, 215 Fremont Street, San Francisco, California. Parties wishing to present oral testimony at the public hearing should notify in writing: Donald E. Zinger, Acting Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Any party may also submit written comments regarding the waiver request to the same address to the attention of the Docket EN-85-10. Copies of material relevant to the waiver request (Docket EN-85-10) will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Attorney/Advisor, Manufacturers Operations Division (EN-340-F) U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8657.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

Section 209(a) of the Act, as amended, 42 U.S.C. 7543(a), provides in part:

> "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part . . . [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent . . . to the intitial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(s) for California "if the state determines that [its] . . . standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. . . . [unless] the Administrator finds that—(A) the determination of the State is arbitrary and capricious, (B) [California] does not need such . . . standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class of vehicles without the necessity of receiving a further waiver of Federal preemption. If California acts to amend previously waived emission standards or accompanying enforcement procedures, the change may be considered to be within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with respect to section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.

By a letter dated July 11, 1985, CARB submitted to EPA a request for a determination that certain amendments are within the scope of previous waivers of Federal preemption. These amendments revise California's current heavy-duty diesel program which provides for primary standards measured by way of steady-state test procedures and optional standards measured by transient test procedures. The amendments provide only for standards measured by means of transient cycle test procedures for 1985 and subsequent model years. This change aligns California's test procedures with Federal test procedures. In addition, the amendments incorporate EPA's full-life useful life periods for heavy-duty diesel engines. The amendments also include revised procedures for establishing engine durability based upon individual manufacturers' durability test methods, and incorporate procedures for small-volume manufacturers which are based on the Federal procedures and adjusted to be appropriate for the California market. Other amendments include minor conforming changes to California's Motor Vehicle In-Use Label

Specification and California's Emissions-Related Defects Reporting Procedures.

California states in its July 11, 1985 letter that it has determined that these amendments do not undermine its determination that its standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards since these amendments do not change California exhaust emission standards. Further, California states that these amendments are consistent with section 202(a) of the Clean Air Act since the amendments incorporate in significant part the current Federal transient cycle test procedures. Finally, California states that the amendments raise no new issues affecting previous waiver decisions. However, EPA believes that by removing the manufacturer's option to certify pursuant to transient test procedures or steady-state standards and test procedures, these amendments do raise significant new issues not considered in prior waiver decisions. In effect, California's amendments establish new standards and test procedures for heavy-duty diesel-powered vehicles and engines.

Since EPA believes California's request should be considered according to the requirements for a full waiver determination, an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file 10 copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the address listed above not later than March 17, 1986. In addition, the party should submit 25 copies, if feasible, of the proposed statement to the Presiding Officer at the time of the hearing.

Since a public hearing is designed to give interested persons an opportunity to participate in this proceeding, there are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statements of any witness.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. The Administrator will base his determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and consider other scientific, engineering or other pertinent information. This information will be available for public inspection at the EPA Centeral Docket Section.

Dated: February 5, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-3831 Filed 2-20-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-66126; FRL-2954-9]

Certain Pesticide Products; Intent to Cancel Registrations; Bonide Chemical Co. et al.

Correction

In FR Doc. 86-849 beginning on page 2956 in the issue of Wednesday, January 22, 1986, make the following corrections:

1. On page 2956, in the table, in the first column, "140-1" should read "140-41".

2. On page 2959, in the table, in entry 20004-4, in the third column, the zip code should read "32804".

BILLING CODE 1505-01-M

[OPP-240065; FRL-2953-7]

State Registration of Pesticides

Correction

In FR Doc. 86-667 beginning on page 1844 in the issue of Wednesday, January 15, 1986, make the following correction: On page 1845, in the second column, in the second complete paragraph, in the fifth line, "(0,005%)" should read "(0.005%)".

BILLING CODE 1505-01-M

[ER-FRL-2972-6]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed February 10, 1986 Through February 14, 1986 Pursuant to 40 CFR 1506.9.

EIS No. 860045, Final, Adopted, APH, SEV, Western United States Mammalian Predator Damage Management for Livestock Protection, Due: March 24, 1986, Contact: John Wood (301) 436-8896.

EIS No. 860046, Draft, FHW, AZ, Arizona Forest Highway/OR-67 Reconstruction, Jacob Lake to Grand Canyon National Park, Coconino County, Due: April 9, 1986, Contact: Robert Arensdorf (303) 236-3468.

EIS No. 860047, Draft, COE, IN, Indiana Harbor Confined Disposal Facility and Maintenance Dredging, Construction, Lake Michigan, Lake County, Due: April 7, 1986, Contact: Keith Ryder (312) 353-7795.

EIS No. 860048, Draft, FHW, FL, Northwest Hillsborough Expressway Construction, I-275 to FL-597/Dale Mabry Highway, Hillsborough County, Due: April 7, 1986, Contact: P.E. Carpenter (904) 681-7223.

EIS No. 860049, Draft, CDB, MI, Oakland Technology Park Development, CDBG, Oakland County, Due: April 7, 1986, Contact: Joseph Joachim (313) 858-0497.

EIS No. 860050, Final, COE, AL, Huntsville Spring Branch and Indian Creek System, DDT Contamination Isolation, Olin's Remedial Action Plan, Permits, Madison County, Due: March 24, 1986, Contact: Ray Hedrick (615) 736-5026.

EIS No. 860051, Final, AFS, PR, Caribbean National Forest and Luquillo Experimental Forest, Land and Resource Management Plan, Due: March 24, 1986, Contact: John Alcock (404) 881-4177.

EIS No. 860052, Draft IBR, CO, Stagecoach Reservoir Project, Construction, Upper Yampa River Valley, Yampa River, Routt County, Due: April 14, 1986, Contact: Harold Serseland (801) 524-5580.

EIS No. 860053, Draft, FHW, OR, Airport Way Widening and Extension, I-205 to I-84, Multnomah County, Due: April

7, 1986, Contact: Dale Wilken (503) 399–5749.

EIS No. 860054, Draft, FHW, OR, Cornell Road Improvements, 185th Avenue to N.W. 242nd Avenue, Washington County, Due: April 7, 1986, Contact: Dale Wilken (503) 399–5749.

EIS No. 860055, Final, BLM, WY, MT, ND, SD, Bairoil/Dakota Carbon Dioxide Projects, Approval, Right-of-Way Grants and Issuance of Permits, Due: March 24, 1986, Contact: Eugene Jonart (307) 772–2219.

EIS No. 860056, Final, FHW, PA, Bayfront-Port Access Road/LR–1003 Section A100 Construction I–79/West 12th Street to East 6th Street/East Lake Road, Erie County, Due: March 24, 1986, Contact: Manuel Marks (717) 782–2222.

EIS No. 860057, Draft, MMS, SEV, January 1987–December 1991 Outer Continental Shelf (OCS) Oil and Gas Sales, 5 Year Program, Leasing, Due: May 8, 1986, Contact: Daniel Henry (202) 343–6264.

EIS No. 860058, Draft, VAD, FL, Northern Palm Beach County Veterans Administration Medical Center, Construction, Palm Beach County, Due: April 7, 1986, Contact: Susan Livingstone (202) 389–3316.

Amended Notice:

EIS No. 860013, Drevised, AFS, NM, Santa Fe National Forest, Land and Resource Management Plan, Published FR 1–24–86—Incorrect status.

Dated: February 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–3865 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-2972-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 3, 1986 through February 7, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated February 1986 (51 FR 4804).

DRAFT EISs

ERP No. D–FHW–J40112–MT, Rating LO, I–15 Beltview Interchange Construction, I–15 to Colonial Drive, MT. Summary: EPA has no objections to the proposed project.

ERP No. D–SCS–G36131–LA, Rating LO, Mill Haven Watershed Flood Prevention and Drainage Plan, LA. Summary: EPA has no objections to the proposed action. However, EPA requests that additional information in areas of 404 jurisdiction, mitigation maintenance procedures, and pesticides application be included in the final EIS.

Final EISs

ERP No. FS–COE–E32026–AL, Mobile Harbor Channel Improvements, Construction and Maintenance, Offshore Dredged Material Disposal Site, Designation, AL. Summary: EPA continues to object to the use of a portion of the dredged material from the upper channel to create approximately one thousand (1,000) acres of fastland in the shallow water adjacent to Brookley Complex. Mobile Bay has over many years lost substantial acreage of wetlands and bay bottoms, and the cumulative impact of these losses is substantial. EPA is concerned that the functioning of the Mobile estuary will be further damaged by this action.

ERP No. FS–COE–E35079–AL, Upper Mobile Harbor Dredged Material Disposal, Maintenance Dredging, Long Range Disposal Plan, AL. Summary: EPA has reviewed the final supplement to the EIS and is waiting for the Mobile District to determine a selected alternative.

ERP No. F–FHW–G40035–TX, Beltway 8 (Sect. III) Construction, US 59 South to I–10 West, Right-of-Way Acquisition, TX. Summary: EPA does not object to the proposed action provided the mitigation measures described are properly implemented.

ERP No. F–SCS–E36153–00, Wolf and Loosahatchie R. Basins Multipurpose Land and Water Mgmt. Plan, 404 Permit, TN and MS. Summary: EPA has no objections to the proposed project.

Amended Notice

The following review was completed during the week of November 18, 1985 through November 22, 1985 and should have appeared in the **Federal Register** Notice published on December 6, 1985.

ERP No. F–USA–D11005–VA, Ft. Story Ongoing Mission, Logistics-Over-the-Shore (LOTS) Training, Continued Operation and LOTS Units Modernization, VA. SUMMARY: EPA identified a number of areas in the EIS which were insufficient including noise issues, impacts to the ecosystem, and incomplete discussion of alternatives. EPA recommends submission of supplemental information.

Dated: February 18, 1986.

David G. Davis,

Acting Director, Office of Federal Activities.

[FR Doc. 86–3866 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS-51611; FRL-2973]

Premanufacture Notices Receipts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of forty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86–496, 86–497, 86–498, 86–499, 86–500, 86–501, 86–502 and 86–503; May 7, 1986

P 86–504, 86–505, 86–506, 86–507, 86–508, 86–509, 86–510, 86–511, 86–512, 86–513, 86–514 and 86–515; May 10, 1986

P 86–516, 86–517, 86–518, 86–519, 86–520, 86–521 and 86–522; May 11, 1986

P 86–523, 86–524, 86–525, 86–526, 86–527, 86–528, and 86–529; May 12, 1986

P 86–530, 86–531, 86–532, 86–533, 86–534, 86–535, 86–536, 86–537, 86–538, 86–539, and 86–540, May 13, 1986

Written comments by:

P 86–496, 86–497, 86–498, 86–499, 86–500, 86–501, 86–502 and 86–503; April 7, 1986

P 86–504, 86–505, 86–506, 86–507, 86–508, 86–509, 86–510, 86–511, 86–512, 86–513, 86–514; April 10, 1986

P 86–516, 86–517, 86–518, 86–519, 86–520, 86–521 and 86–522; April 11, 1986

P 86–523, 86–524, 86–525, 86–526, 86–527, 86–528, and 86–529; April 12, 1986

P 86–530, 86–531, 86–532, 86–533, 86–534, 86–535, 86–536, 86–537, 86–538, 86–539 and 86–540; April 13, 1986

ADDRESS: Written comments, identified by the document control number "[OPTS–51611]" and the specific PMN number should be sent to: Document Control Officer (TS–793), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202) 382–3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86–496

Manufacturer. Givaudan Corporation.
Chemical. (S) Benzoic acid, 4-[[[[4-ethoxycarbonyl)phenyl] amino]methylene]-amino]-ethyl ester.
Use/Production. (S) Industrial, commercial and consumer ultraviolet absorber. Prod. range: Confidential.
Toxicity Data. Skin sensitization: Non-sensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Release to air and water. Disposal by publicly owned treatment works (POTW).

P86–497

Manufacturer. Eastman Kodak Company.
Chemical. (S) 3,3'-Carbonylbis[7-(diethylamino)-2H-1-benzopyran-2-one].
Use/Production. (G) Highly controlled non-dispersive use. Prod. range: 25–50 kg/yr.
Toxicity Data. Acute oral: >3,200 mg/kg; Irritation: Skin—Slight; Skin sensitization: Sensitizer.
Exposure. Manufacturer and processing: dermal, a total of 3 workers, up to 0.8 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release. Less than 20 kg/batch incinerated.

P86–498

Manufacturer. Confidential.
Chemical. (S) 3-Acetyl-4-oxopentanoic acid, ethyl ester.
Use/Production. (G) Chemical intermediate. Prod. range: 3,000–5,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 8 workers, up to 0.5 hr/da, up to 10 da/yr.
Environmental Release/Disposal. No release. Less than 20 kg/batch incineration.

P86–499

Manufacturer. Confidential.
Chemical. (G) Salt of substituted phenyl hydrazinoaltanoic acid derivative.
Use/Production. (G) Chemical intermediate. Prod. range: 5,000–11,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 15 workers, up to 0.7 hr/da, up to 10 da/yr.
Environmental Release/Disposal. No release. Less than 5 kg/batch incinerated.

P86–500

Manufacturer. Shell Oil Company.
Chemical. (G) Tetraglycidylamine.
Use/Production. (S) Site-limited epoxy resin varnish for production of carbon fiber reinforced prepregs for aerospace applications. Prod. range: 2,300–14,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. 1 to 2 kg/batch released to air with 0.01 kg/batch to water. Disposal by navigable waterway.

P86–501

Manufacturer. Shell Oil Company.
Chemical. (G) Aromatic diamine.
Use/Production. (G) Chemical intermediate epoxy resin curing agent. Prod. range: 4,500–13,500 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 1.0 to 2.0 kg/batch released to air.

P86–502

Manufacturer. Shell Oil Company.
Chemical. (G) Tetraglycidylamine.
Use/Production. (S) Site-limited epoxy resin varnish for production of carbon fiber reinforced prepregs for aerospace industry. Prod. range: 2,300–7,000 kg/yr.
Toxicity Data. Non data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 1 to 2 kg/batch released to air with 0.01 kg/batch to water. Disposal by navigable waterway.

P86–503

Manufacturer. Shell Oil Company.
Chemical. (G) Aromatic diamine.
Use/Production. (G) Chemical intermediate expoxy curing agent. Prod. range: 4,500–23,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 1.0 to 2.0 kg/batch released to air.

P86–504

Importer. Confidential.
Chemical. (G) Alkaline metal salt of mercapto substituted heterocycle.
Use/Production. (G) Oil well fluid additive. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P86–505

Manufacturer. Mallinckrodt, Inc.
Chemical. (S) Propane,2,2-bis[p(p-nitrophenoxy)phenyl].
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P86–506

Manufacturer. Confidential.
Chemical. (G) Halogenated aromatic ether.
Use/Production. (S) Flame retardant for thermoplastics (molded products), textile back coatings, and reinforced polyester resins. Prod. range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Mild, Eye—Mild; Ames test: Non-mutagenic; Inhalation: 1.77 mg/l.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P86–507

Manufacturer. Wickhen Products, Inc.
Chemical. (G) Acrylate terpolymer.
Use/Production. (G) Carrier for disinfectants and fungicides. Prod. range: 2,000 kg/yr.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 1 worker, up to 4 hrs/yr.
Environmental Release/Disposal. No release.

P86–508

Importer. Ciba-Geigy Corporation.
Chemical. (G) Azo triazinyl benzothiazolesulfonic acid.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizer; LC_{50}96 hr (Zebra fish): >1,000 mg/l; COD: 100.1 mg/g O_2; BOD: 0 mg/g O_2; IC_{50}: −>1,000 mg/l; Biodegradability: Not biodegradable

Exposure. Processing: dermal, a total of 2 workers, up to 0.5 hr/da.
Environmental Release/Disposal. 0.3 kg/batch released to water. Disposal by POTW.

P 86–509

Manufacturer. Hach Company.
Chemical. (S) Furoic acid, barium salt.
Use/Production. (S) Industrial and commercial reagent for sulfate in water. Prod. range: 400–799 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 15 workers, up to 4 hrs/da, up to 16 da/yr.
Environmental Release/Disposal. Less than 1 kg/batch released to water. Disposal by POTW and treatment facility.

P 86–510

Manufacturer. Owens Corning Fiberglass Corporation.
Chemical. (G) Amine modified polyester polyol.
Use/Production. (S) Industrial molding resin. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 2–5 workers.
Environmental Release/Disposal. Release to air. Disposal by incineration.

P 86–511

Manufacturer. Mazer Chemicals, Inc.
Chemical. (G) Modified glycol polymer.
Use/Production. (G) Manufacturing intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–512

Manufacturer. Confidential.
Chemical. (G) Aromatic polyether.
Use/Production. (S) Commercial protective coatings. Prod. range: 9,090–18,180 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 1 hr/da, up to 20 da/yr.
Environmental Release/Disposal. Less than 10 lb/batch released to land. Disposal by landfill.

P 86–513

Importer. Confidential.
Chemical. (G) Substituted nitrogen heterocycle.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–514

Manufacturer. Confidential.
Chemical. (G) Acrylic resin solution.
Use/Production. (G) Open, nondispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86–515

Manufacturer. Confidential.
Chemical. (G) Acrylic resin solution.
Use/Production. (G) Highly dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86–516

Exporter. Charkit Chemical Corporation.
Chemical. (S) Benzenediazonium, 2-methoxy-4-(phenylamino), sulfate (1:1).
Use/Import. (S) Industrial condensation polymer, graphic art plate coatings. Import range: 300–1,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86–517

Manufacturer. Lithium Corporation of America.
Chemical. (S) Magnesium 2-methyl-1-pentoxide.
Use/Production. (S) industrial magnesium precursor for poly olefin catalysts, reagent for synthesis; drying agent for alcohols, catalyst for transesterfication condensation, cross-linking agent, manufacture of performance chemicals, e.g., lubricant, additive and grease. Prod. range. Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0.1 kg/batch released to floor. Disposal by navigable waterway.

P 86–518

Manufacturer. Lithium Corporation of America.
Chemical. (S) Sodium *n*-butyl-, *sec.*—butyl-, 2-ethylhexylmagnesiate.
Use/Production. (S) Industrial polymerization initiator, general organic synthesis reagent metallation, used to manufacture performance chemicals, such as greases, cosmetics and lubricants. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. 0.1 kg/batch released by floor. Disposal by navigable waterway.

P 86–519

Manufacturer. Confidential.
Chemical. (G) Polycondensate of aromatic carboxylic acid and two kinds of alcohols.
Use/Production. (G) Additives for printing material. Prod. range: Confidential.
Toxicity Data. Ames test: Non-mutagenic; PEX test: Not a bioaccumlative.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–520

Importer. Western Lithotech.
Chemical. (G) Substituted naphthothiazoline.
Use/Import. (G) Additive for printing material. Import range: Confidential.
Toxicity Data. Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by incineration.

P 86–521

Manufacturer. The Dow Chemical Company.
Chemical. (G) Brominated aromatic hydrocarbon.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by navigable waterway.

P 86–522

Manufacturer. Confidential.
Chemical. (G) Fatty alkyl dithiocarbamate.
Use/Production. (G) Destructive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–523

Manufacturer. Confidential.
Chemical. (G) Amine salt of sulfonated heterocyclic compound.
Use/Production. (G) Open, non-dispersive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential. Disposal by POTW.

P 86–524

Importer. Marubeni America Corporation.

Chemical. (G) Copolymer of vinyl compounds.

Use/Import. (S) Paint additive (solvent base paint antifoam agent). Import range: 100,000–200,00 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–525

Importer. Wacker-Chemie Gmbh.

Chemical. (G) Vinyl resin of vinyl chloride-acrylic acid ester copolymer with OH functional sites.

Use/Import. (G) Open, non-dispersive use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86–526

Manufacturer. Rohm and Haas Company.

Chemical. (G) Acrylic copolymer.

Use/Production. (S) Binder coating for high performance industrial adhesive tapes additives for a open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant; Eye—Irritant.

Exposure. Manufacture: dermal, a total of 16 workers.

Environmental Release/Disposal. Release to land. Disposal by approved landfill.

P 86–527

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Intermediate for use in a dry cement modifier. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

Exposure. Manufacture: dermal, a total of 20 workers.

Environmental Release/Disposal. Release to air Disposal by permit requirement.

P 86–528

Manufacturer. Rohm and Haas Company.

Chemical. (G) Modified acrylic polymer.

Use/Production. (G) Intermediate for use in a dry cement modifier. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant.

Exposure. Manufacture: dermal, a total of 20 workers.

Environmental Release/Disposal. Release to air. Disposal by permit requirement.

P 86–529

Manufacturer. Rohm and Haas Company.

Chemical. (G) Aqueous acrylic polymer.

Use/Production. (G) Intermediate for use in a dry cement modifier. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 14 workers.

Environmental Release/Disposal. Release to land.

P 86–530

Manufacturer. Condidential.

Chemical. (S) Substituted acetic acid, mixed sodium and potassium salts.

Use/Production. (G) Open, non-dispersive uses, smaller quantities will be used for open dispersive uses. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 18 workers.

Environmental Release/Disposal. 15 to 30 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86–531

Manufacturer. Confidential.

Chemical. (S) Substituted acetic acid, potassium salt.

Use/Production. (G) Open, non-dispersive uses, smaller quantities will be used for open dispersive uses. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 18 workers.

Environmental Release/Disposal. 15 to 30 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86–532

Manufacturer. Confidential.

Chemical. (G) Substituted acetic acid, sodium salt.

Use/Production. (G) Open, non-dispersive and dispersive uses. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 18 workers.

Environmental Release/Disposal. 15 to 30 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86–533

Manufacturer. Confidential.

Chemical. (G) Substituted acetic acid.

Use/Production. (G) Open, non-dispersive and dispersive uses. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 18 workers.

Environmental Release/Disposal. 15 to 12,950 kg/batch released to water. Disposal by POTW and navigable waterway.

P 86–534

Importer. Confidential.

Chemical. (G) Substituted bis 1,3,2-dioxaphosphorinane, 2,2' dioxide.

Use/Production. (S) Industrial and flame retardant for polyacrylates. Prod. range: Confidential.

Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Ames test: Negative.

Exposure. Manufacture, processing and use: 2 to 4 persons/shift, 2 to 3 hrs/shift.

Environmental Release/Disposal. Little leaching released. Disposal by landfill.

P 86–535

Importer. Confidential.

Chemical. (G) Unsaturated polyester.

Use/Production. (S) Industrial and commercial surface coating for wood. Import range: 5,400–10,800 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing and use: a total of 50 to 100 workers.

Environmental Release/Disposal. None anticipated.

P 86–536

Manufacturer. Confidential.

Chemical. (S) Substituted phenylpyrazolone.

Use/Production. (G) Chemical intermediate. Prod. range: 250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 9 workers, up to 0.5 hr/da, up to 3 da/yr.

Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 86–537

Manufacturer. Confidential.

Chemical. (S) Substituted phenylphyrazolone.

Use-Production. (G) Contained use. Prod. range: 250 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture, processing and use: dermal, a total of 12 workers, up to 0.7 hr/da, up to 6 da/yr.

Environmental Release/Disposal. No release. Disposal by biological treatment system and less than 1 to 2 kg/batch incinerated.

P 86–538

Manufacturer. Confidential.
Chemcial. (S) Substituted phenylacetamide.
Use/Production. (G) Chemical intermediate. Prod. range: 100 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture, processing and use: dermal, a total of 7 workers, up to 0.6 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 86–539

Manufacturer. Confidential.
Chemical. (S) Substituted phenylacetamide.
Use/Production. (G) Chemical intermediate. Prod. range: 150 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal, a total of 5 workers, up to 0.7 hr/da, up to 3 da/yr.
Environmental Release/Disposal. No release. Less than 1 kg/batch incinerated.

P 86–540

Manufacturer. Ethyl Corporation.
Chemical. (G) Mixture of metallic aromatic amides.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. Confidential.

Dated: February 14, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–3826 Filed 2–20–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59753; FRL–2972–9]

Premanufacture Notices Receipts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of nine such PMNs and provides a summary of each.

DATES: Close of Review Period: Y 86–73, February 27, 1986; Y 86–74, 86–75, and 86–76, March 2, 1986; Y 86–77, 86–78 and 86–79, March 3, 1986; Y 86–80, and 86–81, March 4, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–73

Importer. Nuodex Inc.
Chemical. (S) Dodecanedioic acid, polymer with azacyclo-tridecan-2-one and alpha-hydro-omega-hydroxypoly(oxy-1.4-butanediyl).
Use/Import. (S) Industrial tubings, mechancial parts, e.g, cock wheels. Import range: 10,000–35,000 kg/yr.
Toxicity Data. Acute oral: 10,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. No exposure.
Environmental Release/Disposal. No release.

Y 86–74

Importer. Confidential.
Chemical. (G) Styrenated acrylic modified polyester.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–75

Importer. Confidential.
Chemical. (G) Thermosetting alkyd resin.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–76

Importer. Confidential.
Chemical. (G) Alkyd resin.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–77

Importer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Import. (G) Component in automotive body paint. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–78

Manufacturer. The Dow Chemical Company.
Chemical. (G) Crosslinked acrylate copolymer.
Use/Production. (G) Intermediate in polymer manufacturing. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal.
Environmental Release/Disposal. Release to air and water. Disposal by incineration, navigable waterway after treatment and on-site waste water treatment plant.

Y 86–79

Manufacture. Confidential.
Chemical. (G) Acrylic polymer.
Use/Production. (G) Surface active agent. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 86–80

Manufacture. Confidential.
Chemical. (G) Oil modified alkyd resin.
Use/Production. (S) Commercial protective coating. Prod. range: 550,000–1,100,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 2 workers, up to 4 hrs/da, up to 42 da/yr.

Environmental Release/Disposal. 2 to 5 kg released to land. Disposal by landfill and sawdust.

Y 86-81

Manufacture. Confidential.

Chemical. (G) Short oil coconut alkyd resin.

Use/Manufacturer. (G) Polymeric binder for lacquers and baking enamel. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: February 14, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-3825 Filed 2-20-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-40013; FRL-2968-9]

Interagency Testing Committee; Placement of Isopropanol in the Intent-to-Designate Category

Correction

In FR Doc. 86-3047 appearing on page 5250 in the issue of Wednesday, February 12, 1986, the document number should have appeared as it does in the heading.

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0039

Title: Recertification Questionnaire and Recommendation

Abstract: This form is used to document information obtained from Occupants of temporary housing relative to their need for continued assistance. The form also documents the Housing Official's recommendation concerning each family's recertification or termination of assistance.

Type of Respondents: Individuals or households

Number of Respondents: 2,125

Burden Hours: 708.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: February 12, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-3749 Filed 2-20-86; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-465]

First Federal Savings Bank of Georgia, Winder, GA; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 7, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of First Federal Savings Bank of Georgia, Winder, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3812 Filed 2-20-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-466]

Home Federal Savings & Loan Association of Ada, Ada, OK; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 7, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Home Federal Savings and Loan Association of Ada, Ada, Oklahoma for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Topeka, Post Office Box 176, Topeka, Kansas 66601.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3813 Filed 2-20-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-467]

Lake Sunapee Savings Bank, fsb Newport, NH; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 7, 1986, the Office General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Lake Sunapee Savings Bank, fsb, Newport, New Hampshire, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of said Corporation, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of said Corporation at the Federal Home Loan Bank of Boston, Post Office Box 9106, Boston, Massachusetts.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3814 Filed 2-20-86; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-468]

Newnan Federal Savings and Loan Association, Newnan, GA; Final Action Approval of Conversion Application

Dated: February 14, 1986.

Notice is hereby given that on February 6, 1986, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Newnan Federal Savings and Loan Association, Newnan, Georgia for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta,

P.O. Box 56527, Peachtree Center Station, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3815 Filed 2-20-86; 8:45 am]

BILLING CODE 6720-01-M

[No. 86-90]

Privacy Act of 1974; New System of Records

Dated: February 3, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of proposed new system of records.

SUMMARY: Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Federal Home Loan Bank Board ("Board") is notifying the public of its proposal to establish a new system of records in order to collect information on known or suspected criminal violations and enforcement actions taken against persons in connection with the operation of financial institutions, their holding companies or service corporations, as well as change-of-control applications filed by, and other significant business transactions with, individuals concerning institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC").

DATE: Comments must be received by March 24, 1986.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: John Downing, Attorney, (202) 377-6434 or Rosemary Stewart, Director, (202) 377-6437, Office of Enforcement, at the above address.

Authority: 5 U.S.C. 552a.

FHLBB-29

SYSTEM NAME:

Confidential Individual Information System.

SYSTEM LOCATION:

Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These records may contain information concerning individuals who have filed notices of intention to acquire control of an insured institution, controlling persons of companies that have filed applications to acquire control of an insured institution, organizers of institutions seeking FSLIC insurance of accounts or federal charters, individuals who have been the subject of administrative enforcement actions or other civil actions by any agency with authority to supervise or regulate federally insured financial institutions, those who have been named in criminal referrals by such agencies or by federally insured institutions or have been referred to professional societies, licensing authorities or ethics committees for disciplinary purposes, individuals identified as the subjects of criminal investigations by the Department of Justice or state law enforcement authorities in connection with the operation of federally insured financial institutions, and persons engaging in significant business transactions with FSLIC-insured institutions. This system also contains the identity of the custodian of any documents describing the specific event causing entry into the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records identify the individual involved and his relationship to the institution, service corporation or holding company; the event causing entry of information into the system (e.g., a change-of-control filing, an enforcement action, a criminal referral naming an individual or a referral of information to a professional group for disciplinary action, or receipt of information concerning a criminal or civil violation involving an insured institution); any regulatory or judicial action taken as a result; and the location and nature of any additional records concerning the specific event.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1464 and 1730.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING THE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(a) To provide the Board's Office of Examinations and Supervision ("OES") and Office of Enforcement ("Enforcement") and the Federal Home Loan Banks with information concerning the current status of suspected criminal violations in connection with institutions the accounts of which are insured by the FSLIC, their holding companies, and service corporations, which have been referred to the Department of Justice or other law enforcement agencies for possible investigation and prosecution.

(b) To provide information to government agencies that supervise or regulate any of the operations of financial institutions concerning whether persons connected with these institutions have been the subject of administrative or civil enforcement actions.

(c) To provide information concerning a violation or potential violation of civil or criminal law, rule, order or regulation to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or implementing the statute, rule regulation, or order.

(d) To provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(e) To respond to requests from the Congress.

(f) To provide information to the Office of General Counsel ("OGC"), OES and the Federal Home Loan Banks concerning groups or individuals applying for permission to organize a Federal association and/or making *de novo* applications for FSLIC insurance and the officers and directors of those proposed institutions, and concerning officers and directors of existing financial institutions applying for FSLIC insurance for use in considering those applications.

(g) To provide information to OGC, OES, Enforcement, and the Federal Home Loan Banks concerning persons who have filed notices of intention to acquire control of insured institutions and controlling persons of companies filing applications to acquire control of insured institutions to determine if any agency action is required.

(h) To provide information (1) to OES, Enforcement and the Federal Home Loan Banks examining and supervisory staffs with regard to persons transacting business with or for savings institutions in connection with the Board's examination and supervision of insured institutions, service corporations and savings and loan holding companies, and (2) to persons designated by the Board as representatives of the Corporation to conduct investigations of insured institutions, their service corporations, or their holding companies.

(i) To provide information to receivers or conservators of insured institutions or formerly insured institutions for use in determining the background and reliability of persons with whom they are considering entering into transactions or with whom the

institution previously has entered into transactions.

(j) To OGC, Enforcement and persons representing the Board in legal matters, and to other persons having access to legal papers connected with such matters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained on fixed disks.

RETIEVABILITY:

Records are retrievable by name of individual or by the individual's relationship to the insured institution involved.

SAFEGUARDS:

Access to the system will be available only to Board employees and agents who have been issued the system passwords, which will be revealed only to those persons who have need for information from the system in the performance of their duties.

RETENTION AND DISPOSAL:

Records will be retained for up to 25 years after the date of entry. Records will then be sent to the Federal Records Center.

SYSTEM MANAGER AND ADDRESS:

Database Administrator, Office of Examinations and Supervision, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552

NOTIFICATION PROCEDURES:

This system will be exempt from notification and record-access requirements and requirements that an individual be permitted to contest its content under 5 U.S.C. 552a(k)(2) because it contains investigatory material compiled for law enforcement purposes.

RECORD ACCESS PROCEDURES:

See Notification procedures.

CONTESTING RECORD PROCEDURES:

See Notification procedures.

RECORD SOURCE CATEGORIES:

This system will be exempt under 5 U.S.C. 552a(k)(2) from the requirement that the sources of records used in the system be published, because it contains investigatory material compiled for law enforcement purposes.

By the Federal Home Loan Bank Board.

Nadine Y. Penn,

Acting Secretary.

[FR Doc. 86-3816 Filed 2-20-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 225-010887.

Title: General Agency Agreement between Hanjin Container Lines, Ltd. and Sea-Land Service, Inc.

Parties: Hanjin Container Lines, Ltd. (Hanjin) and Sea-Land Service, Inc. (Sea-Land).

Synopsis: The proposed agreement would permit Sea-Land to act on behalf of Hanjin as its general agent at the Port of Elizabeth, New Jersey for the carriage of cargo between ports and points in the Far East, and the United States. The parties have requested a shortened review period.

Dated: February 18, 1986.

By Order of the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-3845 Filed 2-20-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under OMB Review

February 14, 1986.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below: Federal Reserve Board Clearance Officer, Martha Bethea, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension with revisions of the following report:

1. Report title: Survey of Terms of Bank Lending (STBL)

Agency form number: FR 2028A, 2028A-S, 2028B

OMB Docket number: 7100-0061

Frequency: Quarterly

Reporters: Commercial banks

Small businesses are affected.

General description of report: This information collection is voluntary 12 U.S.C. 248(a)(2) and is given confidential treatment 5 U.S.C. 552(b)(4).

The STBL collects information on interest rates, including the prime rate, and selected nonprice terms of lending on individual loans to businesses and farmers from a sample of insured commercial banks.

Board of Governors of the Federal Reserve System, February 14, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-3738 Filed 2-20-86; 8:45 am]

BILLING CODE 6210-01-M

LBT Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 13, 1986.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *LBT Corporation*, Shreveport, Louisiana; to engage *de novo* through its subsidiary, LBT Brokerage Services, Inc., Shreveport, Louisiana, in providing discount securities brokerage activities.

Board of Governors of the Federal Reserve System, February 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3739 Filed 2-20-86; 8:45 am]

BILLING CODE 6210-01-M

Teambanc, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under section 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Rgulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding ocmpanies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 17, 1986.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Teambanc, Inc.*, employee stock ownership plan and its subsidiary, Teambanc, Inc., both of Paola, Kansas; to become a bank holding company by merging with Miami Agency, Inc., Paola, Kansas, and thereby indirectly acquiring Miami County National Bank, Paola, Kansas.

Applicant also proposes to engage in general insurance agency activities currently being conducted by Miami Agency, Inc., in a town of less than 5,000 persons pursuant to section 4(c)(8)(C)(I) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, February 14, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3740 Filed 2-20-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on February 14, 1986.

Health Care Financing Administration

Subject: Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report—NEW

Respondents: State or Local Governments; Non-profit Institutions; Small Business or Organizations

Subject: Hospice Home Visits—Section 3901.5 of the Intermediary Manual—NEW
Respondents: Individuals or Households
Subject: Medicaid Program Characteristics Questionaire—Existing Collection
Respondents: State or Local Governments
Subject: Information Collection Requirements in Subpart A 42 CFR 481.9 and 481.10 Conditions of Participation for Rural Health Clinics-HCFA–R–38—Extension—(0938–0334)
Respondents: Business or other for-profit institutions; Small Businesses or Organizations
Subject: Regulation BERC–273F (Sec. 405.334 (b) and (c), and 405.336 (b), (c), (d)) Procedures for Determining whether Providers, Practitioners, or Other Suppliers of Services are Liable for Certain Noncovered Services—NEW
Respondents: Business or other for-profit institutions
Subject: Rural Health Clinics-Request for Medical Information HCFA–Pub. 13.3 Intermediary Manual Sec. 3640.14—Extension—(0938–0209)
Respondents: Small Businesses or Organizations

OMB Desk Officer: Fay S. Iudicello

Public Health Services

Food and Drug Administration

Subject: International Drug Scheduling—NEW
Respondents: Individuals or Households; State or Local Governments; Business or other for-profit institutions; Federal Agencies or Employees; Small Businesses or Organizations

National Institutes of Health

Subject: Coronary Primary Prevention Trial: Physician Practices Post-Trial Results—NEW
Respondents: Business or other for-profit institutions

Office of Assistant Secretary for Health

Subject: 1987 National Medical Expenditure Survey (Pretest for Household Survey, Survey of American Indians and Alaska Natives, Institutional Population Components; screening interview for National Household Survey)—Revision—(0937–0153)
Respondents: Individuals or Households

Centers for Disease Control

Subject: Dioxion Morbidity and Reproductive Study of U.S. Chemical Workers—NEW
Respondents: Individuals or Households

OMB Desk Officer: Bruce Artim

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202–245–6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, Attn: (name of OMB Desk Officer).

Date: February 18, 1986.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86–3759 Filed 2–20–86; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions, and Delegation of Authority; Office of the General Counsel

Part A of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services covers the Office of the Secretary. Chapter AG of Part A, which was published at 38 FR 17032 on June 28, 1973 and most recently amended at 47 FR 25775 on June 15, 1982, is amended to reflect organizational changes in the Office of the General Counsel which were approved January 3, 1986, by the Secretary. The changes (1) abolish the positions of three Deputy General Counsels and two Associate General Counsels, (2) establish the positions of (a) Principal Deputy General Counsel, (b) Deputy General Counsel, and (c) Deputy General Counsel—Legal Counsel, a new position, and (3) redesignate each Assistant General Counsel as Associate General Counsel/Chief Counsel (program).

The following changes to Chapter AG reflect these organizational changes:

Section AG.12 *The General Counsel.*

Amend Subsections B and C to read:

B. In the event of the General Counsel's absence or disability or during a vacancy in the office of General Counsel, the Principal Deputy General Counsel shall act in his place. In the event of a vacancy in the offices of General Counsel and Principal Deputy General Counsel, the Secretary shall designate an Acting General Counsel.

C. Each division is under the general supervision of the General Counsel, the Principal Deputy General Counsel and, to the extent applicable, the Deputy General Counsel. Each division is under the immediate supervision of an Associate General Counsel/Chief Counsel (program).

Section AG.14 *Immediate Office of the General Counsel.*

Amend to read:

A. The Immediate Office of the General Counsel consists of: 1. The General Counsel; 2. Principal Deputy General Counsel; 3. Deputy General Counsel; 4. Deputy General Counsel—Legal Counsel; 5. Executive Assistant to the General Counsel.

Section AG.18 *Divisions in the Office of the General Counsel.*

Add: Inspector General Division.

Section AG.21 *Immediate Office of the General Counsel.*

Amend to read:

A. The General Counsel:

1. Is responsible to and serves as Special Advisor to the Secretary on legal matters in connection with the administration of the Department.

2. Exercises general direction and supervision over all legal activities carried on by the Department.

B. The Principal Deputy General Counsel assists the General Counsel in developing formal and informal advice issued by the Office of the General Counsel and supervises the Associate General Counsels/Chief Counsels (program) in the issuance of legal advice. In the absence or disability of the General Counsel or during a vacancy in the office of General Counsel the Principal Deputy General Counsel shall serve as the Acting General Counsel.

C. The Deputy General Counsel assists the General Counsel by coordinating efforts by the Offices of the Regional Attorney, carrying out office-wide management responsibilities, and performing such other duties as the General Counsel prescribes.

D. The Deputy General Counsel—Legal Counsel assists the General Counsel in providing formal and informal legal advice and opinions to the Secretary, the Under Secretary, and the Assistant Secretaries relating to major new policy directions, innovative programs not clearly delineated by statutory authority, and Departmental programs and initiatives involving more than a single operating component of the Department.

E. The Executive Assistant performs such administrative tasks in accordance with established procedures as are necessary to maintain routine operation of the Office of the General Counsel.

Section AG.22 *Divisions in the Office of the General Counsel.*

Amend Section AG.22A to read:

A. The Divisions in the Office of the General Counsel, under the direction of

an Associate General Counsel/Chief Counsel (program) have the following responsibilities:

* * * * *

Section AG.30 *Department Claims Officer,* AG.35 *Department Patent Officer,* AG.40 *Delegation by Secretary of Authority,* AG.41 *Redelegation by the General Counsel* and AG.42 *Redelegations by the Assistant General Counsel, Business and Administrative Law Division.*

Amend each reference to the Assistant General Counsel, Business and Administrative Law Division to read Associate General Counsel, Business and Administrative Law Division.

This action is effective January 22, 1986.

Dated: February 10, 1986.

John J. O'Shaughnessy,

Assistant Secretary for Management and Budget.

[FR Doc. 86-3848 Filed 2-20-86; 8:45 am]

BILLING CODE 4110-12-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's Boards of Scientific Counselors. These committees will be open for a report on administrative developments. The remainder of the sessions will be devoted to a review and evaluation of intramural projects and performance of individual staff scientists and will not be open to the public in accordance with the determination by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. section 210(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Board of Scientific Counselors, NIMH.

Date and Time: March 20-22: 9:00 a.m.

Place: National Institutes of Health, Building 36, Conference Room 1B-07 Bethesda, Maryland 20892.

Status of Meeting:

Open—March 20: 9:00-9:15 a.m.

Closed—Otherwise.

Contact: Dr. Frederick K. Goodwin, National Institute of Mental Health, National Institutes of Health, Room 4N-224, Bethesda, Maryland 20892, (301) 496-3501.

Purpose: The Board provides expert service to the Director, NIMH, on the mental health intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaulation of productivity and performance of staff scientists.

Committee Name: Board of Scientific Counselors, NIAAA.

Date and Time: March 24-25: 9:00 a.m.

Place: Flow Building, Room 51, 12501 Washington Avenue Rockville, Maryland 20852.

Status of Meeting:

Open—March 24: 9:00-9:30 a.m.

Closed—Otherwise.

Contact: Dr. Boris Tabakoff, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Building 10, Room 3C-103, Bethesda, Maryland 20892, (301) 496-8996.

Purpose: The Board provides expert advice to the Director, DICBR, NIAAA, and through him to the Director, NIAAA on the alcohol intramural research program. This advice is derived from periodic visits to the laboratories for assessment of the research in progress and evaulation of productivity and performance of staff scientists.

Summaries of the meetings and rosters of committee members may be obtained as follows: NIAAA: Ms. Diana Widner, Committee Management Officer, Room 16C20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375. NIMH: Ms. Helen Garrett, Committee Management Officer, Room 9-95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: February 14, 1985.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86-3736 Filed 2-20-86; 8:45 am]

BILLING CODE 4160-20-M

Advisory Committee Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meetings of the agency's initial review committees. These committees will be open for discussion of administrative announcements and program developments. The committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 section 10(d). Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Epidemiologic Research Subcommittee of the Epidemiologic and Services Research Review Committee.

Date and Time: March 3-5: 8:30 a.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209.

Status of Meeting:

Open—March 3: 8:30-9:30 a.m.

Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C08, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charge with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Services Research Subcommittee of the Epidemiologic and Services Research Review Committee.

Date and Time: March 5-7: 1:30 p.m.

Place: Key Bridge Marriott, 1401 Lee Highway, Arlington, Virginia 22209

Status of Meeting:

Open—March 5: 1:30-2:30 p.m.

Closed—Otherwise.

Contact: Gloria Yockelson, Room 9C08, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1367.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities as they relate to mental health epidemiology, mental health service systems research, and evaluation of clinical mental health services, with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: Cognition, Emotion, and personality Research Review Committee.

Date and Time: March 7-9: 9:00 a.m.

Place: The Henley Park Hotel, 926 Massachusetts Avenue, NW., Washington, DC 2001.

Status of Meeting:

Open—March 7: 9:00-10:00 a.m.

Closed—Otherwise.

Contact: Doris East, Room 9C26, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3944.

Purpose: The Committee is charged with the initial review of applications

for assistance from the National Institute of Mental Health for support of research and research training activities relating to the fields of personality, cognition, emotion, and higher mental processes with recommendations to the National Advisory Mental Health Council for final review.

Committee Name: National Advisory Mental Health Council

Date and Time: March 10–12: 9:00 a.m.

Place: March 10: National Institutues of Health, Building 31C, Conference Room 10, Bethesda, Maryland 20205; March 11–12: Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockvill, Maryland 20857.

Status of Meeting:

Open—March 10: 9:00 a.m.—5:00 p.m.

Closed—Otherwise.

Contact: Rachel Driver, Room 9–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3367.

Purpose: The Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institute of Mental Health regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Summaries of the meetings and rosters of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 9–95, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: February 14, 1985.

Brenda L. Williamson,

Acting Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 86–3737 Filed 2–20–86; 8:45 am]

BILLING CODE 4160–20–M

Food and Drug Administration

[Docket No. 86F–0060]

American Feed Industry Association; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the American Feed Industry Association (AFIA) has filed a petition proposing that the food additive regulations be amended by revising the regulation providing for the safe use of selenium when added to animal feeds as a nutritional supplement.

FOR FURTHER INFORMATION CONTACT: William D. Price, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4438.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2201) has been filed by the American Feed Industry Association, 1701 North Fort Myer Dr., Arlington, VA 22209. The petition proposes that 21 CFR 573.920 *Selenium* be amended to provide for the safe use of up to 0.3 part per million selenium in animal feeds as a nutritional supplement when used in accordance with current good manufacturing and feeding practice.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c), as published in the **Federal Register** of April 26, 1985 (50 FR 16636).

Dated: February 12, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–3735 Filed 2–20–86; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following District consumer exchange meeting: Baltimore District Office, chaired by Richard A. Baldwin, Director, Science Branch. The topic to be discussed is Home Use of In-Vitro Diagnostic Kits.

DATE: Thursday, February 27, 10 a.m. to 12 p.m.

ADDRESS: Maryland State Highway Auditorium Building, 300 West Preston Street, Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Mildred A. Voss, Public Affairs Specialist, Food and Drug Administration, 900 Madison Avenue, Baltimore, MD 21202, 301–962–3731.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: February 14, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3734 Filed 2–20–86; 8:45 am]

BILLING CODE 4160–01–M

Advisory Committee Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

Oncologic Drugs Advisory Committee

Date, time, and place. March 14, 8:30 a.m., Conference Rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 14, 8:30 a.m. to 3:15 p.m.; open public hearing, 3:15 p.m. to 4:15 p.m.; David F. Hersey, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cancer patients.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss: (1) Novantrone (mitoxantrone) in advanced breast cancer; (2) Daunorubicin (cerubidine) in adult lymphocytic leukemia; (3) Investigational drug use in patients entering a second institution; and (4) Problems in achieving long-term

followup in cancer studies when investigators move.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverge of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to cetain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested peson who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: February 14, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–3819 Filed 2–20–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[N–42565]

Airport Lease Application; Nevada

February 14, 1986.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), the City of Mesquite has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 13 S., R. 70 E.,
Sec. 15, all,
Sec. 16, E½,
Sec. 21, E½,
Sec. 22, W½,
Sec. 27, NW¼,
Sec. 28, NE¼.

The area described is located in Clark County, Nevada. The application was filed on August 21, 1985, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Ben F. Collins,

District Manager.

[FR Doc. 86–3728 Filed 2–20–86; 8:45 am]

BILLING CODE 4310-HC-M

[N–43266]

Airport Lease Application; Nevada

February 14, 1986.

Notice is hereby given that pursuant to the Act of May 24, 1928 (49 U.S.C. 211–214), the City of Mesquite has applied for an airport lease for the following land:

Mount Diablo Meridian

T. 13 S., R. 71 E.,
Sec. 3, all,
Sec. 4, E½,
Sec. 9, NE¼,
Sec. 10, N½.

The area described is located in Clark County, Nevada. The application was filed on August 21, 1985, and on that date the land was segregated from all other forms of appropriation under the public land laws.

For a period of 45 days from the date of this notice, interested persons may submit comments to the District Manager, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126.

Ben F. Collins,

District Manager.

[FR Doc. 86–3729 Filed 2–20–86; 8:45 am]

BILLING CODE 4310-HC-M

Availability of Environmental Impact Statements; Great Salt Lake, UT; Extension of Comment Period

SUMMARY: The public comment period for the West Desert Pumping Project Draft Environmental Impact Statement, published January 16, 1986 (51 FR 2439), has been extended through April 22, 1986.

John Stephenson,

Acting District Manager.

[FR Doc. 86–3733 Filed 2–20–86; 8:45 am]

BILLING CODE 4310-84-M

Management Framework Plans; Idaho, Cascade Resource Area, Plan Amendment and Planning Analysis for Bureau Motion Land Sales

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of Intent to Initiate a Plan Amendment for the Black Canyon Management Framework Plan (MFP) and a Planning Analysis for Lands Outside a Land Use Plan to Consider Bureau Motion Land Sales of Specific Tracts Prior to Completing the Cascade Resource Management Plan.

Description of proposed action: The Bureau of Land Management, Boise District, Cascade Resource Area, Idaho, is considering for sale, nine (9) tracts of land. Eight (8) tracts have been occupied through unintentional trespass and one (1) unoccupied tract is needed by a local county for a sanitary landfill site expansion. These disposals are to be

initiated prior to completing the Cascade Resource Management Plan. The eight (8) occupied tracts (approximately three acres) are currently being farmed or are encumbered by structures. The one unoccupied tract (80 acres) is located adjacent to an active landfill. The nine land tracts contain approximately 83 acres.

Geographic Area: All nine tracts are located in the south half of the Cascade Resource Area. Three of the occupied tracts are within the area covered by the Black Canyon MFP in Gem County. Five occupied tracts are in Boise County and the one unoccupied tract is located in Ada County.

Public Participation: A Plan Amendment/Planning Analysis, Land Report, and Notice of Action/Notice of Realty Action will be prepared to: Identify the specific sale tracts, analyze the sales and environmental consequences, and provide details of the sale offerings including special patent reservations.

The proposed Plan Amendment/Planning Analysis will be subject to a consistency review with State and Local plans by the Governor for a period of 60 days. Following the Governor's review and with State Director approval of the Plan Amendment/Planning Analysis, the District Manager will publish a Notice of Action/Notice of Realty Action (NORA) in the **Federal Register**. Such notice will initiate a 45-day protest period on the NORA. Protests would be directed to the Idaho State Director. A concurrent 30-day protest period on the planning decision would also be initiated and would be directed to the National Director.

FOR FURTHER INFORMATION CONTACT: Richard Geier, Cascade Area Manager, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705. Telephone: (208) 334–1582 (commercial) and 554–1582 (FTS).

Dated: February 12, 1986.

J. David Brunner,

Associate District Manager.

[FR Doc. 86–3732 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–GG–M

Motor Vehicles; Off-Road Vehicle Designations, King Range National Conservation Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Interim Designations.

SUMMARY: Pursuant to Executive Orders 11644 and 11989, and 43 CFR Part 8340, the lands within the King Range National Conservation Area under administration of the Bureau of Land Management are designated as open, limited or closed to motorized vehicle use. These designations will remain in effect until a comprehensive review is made during preparation of a resource management plan for the King Range Area. An appeal may be filed within 30 days from the date of this notice with the Ukiah District Office (43 CFR 4.411).

DATE: These designations are effective on February 21, 1986.

FOR FURTHER INFORMATION CONTACT: John Lloyd, Arcata Resource Area Manager, 1125 16th Street, P.O. Box II, Arcata, CA 95521 (Telephone: (707) 822–7648 or District Manager, Ukiah District Office, 555 Leslie Street, P.O. Box 940, Ukiah, CA 95482 (Telephone: (707) 462–3873).

SUPPLEMENTARY INFORMATION: All public lands within the King Range National Conservation Area are designated "CLOSED" to vehicle use with the following exceptions:

The following areas and roads are designated "OPEN":

1. Approximately 50 acres within the zone lying between the ordinary tide levels (foreshore) from Telegraph Creek to Gitchell Creek.

2. Nooning Creek Access Road from its intersection with Shelter Cove Road to the slide in Section 31, T. 4 S., R. 2 E., HM.

3. Paradise Ridge Access Road from its intersection with Shelter Cove Road to where the road crosses the northwest corner of Section 1, T. 5 S., R. 1 E., HM.

4. Saddle Mountain Road from its intersection with Horse Mountain Road to its intersection with Horse Pasture Ridge Road.

5. King Range Road.

6. Prosper Ridge Road from its intersection with Lighthouse Road to the private property boundary in Section 30, T. 2 S., R. 2 W., HM.

7. Kaluna Cliff Road to the private property boundary.

The following roads are designated "LIMITED", with specified seasonal restrictions; vehicle limitations are advisory:

1. Nooning Creek Access Road from the slide in Section 31, T. 4 S., R. 2 E., HM. to its terminus is advised for 4WD's, motorcycles and ATV's only.

2. Paradise Ridge Access Road from where the road crosses the northwest corner of Section 1, T. 5 S., R. 1 E., HM. to its terminus in Section 15, T. 4 S., R. 1 E., HM. is advised for 4WD's, motorcycles and ATV's only.

3. Windy Point Road from its intersection with Prosper Ridge Road to the private property boundary near Four Mile Creek is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November 1 to March 31.

4. Johnny Jack Road to the bluff is advised for 4WD's, motorcycles and ATV's only, from April to October 31; closed from November 1 to March 31.

5. Horse Pasture Ridge Road is advised for 4WD's, motorcycles, and ATV's only.

6. Telegraph Ridge Road is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November to March 31.

7a. Smith-Etter Road from its intersection with Wilder Ridge Road to Telegraph Ridge Road is open from April 1 to October 31; closed from November 1 to March 31.

7b. Smith-Etter Road from its intersection with Telegraph Ridge Road to the last switchback approximately one quarter mile from the beach is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November 1 to March 31.

8. Cooskie Creek Road from its intersection with Telegraph Ridge Road to Johnny Jack Ridge Road is advised for 4WD's, motorcycles and ATV's only, from April 1 to October 31; closed from November 1 to March 31.

9. Finley Ridge Road is advised for 4WD's, motorcycles and ATV's only.

Dated: February 14, 1986.

Van W. Manning,

District Manager.

[FR Doc. 86–3731 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–84–M

Oil and Gas Leasing; Request for Public Comments Regarding Leasing in the National Petroleum Reserve—Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Solicitation of Comments Regarding Oil and Gas Leasing in the National Petroleum Reserve—Alaska.

SUMMARY: The public is requested to give comments on its interest in competitive leasing in the National Petroleum Reserve—Alaska (NPR–A) during fiscal year 1987 for the purpose of determining a general and relative level of interest. Specific public comments are requested regarding future NPR–A lease sales, and current lease terms and stipulations:

1. If a lease sale were scheduled in the NPR–A in fiscal year 1987, would you submit a bid at such a sale?

2. Please comment on whether any of the tracts selected to be offered in the

1985 sale, which was not held, should be deleted from consideration for a 1987 lease sale, and identify any additional tracts of specific interest which have not been previously offered or you would like to have reoffered in 1987.

3. Would other leasing opportunities in Alaska impact your participation in an NPR–A lease sale in fiscal year 1987? If so, please identify these leasing opportunities.

4. Are there any terms, conditions, stipulations or other factors currently imposed on NPR–A lease sales and leases that you would like to see changed if a sale were offered in fiscal year 1987?

Any comments that contain proprietary information should be so marked, and, to the extent possible under the Freedom of Information Act, will be treated confidentially.

A map of the NPR–A and those tracts which were tentatively selected to be offered in 1985 is available upon request from the Public Room, Alaska State Office, BLM, 701 C Street, Box 13, Anchorage, Alaska 99513. Copies will be mailed upon request.

DATE: Comments should be submitted by April 1, 1986.

ADDRESS: Direct your responses to: The Alaska State Office, Bureau of Land Management, 701 C Street, Box 13, Anchorage, AK 99513.

Comments will be available for public review in the Public Room at the above address during regular business hours (7:30 am–4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: William S. Hauser, (907) 271–3114.

Fred Wolf,

Acting State Director.

[FR Doc. 86–3730 Filed 2–20–86; 8:45 am]

BILLING CODE 4310–JA–M

Bairoil/Dakota CO_2 Projects; Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD).

SUMMARY: Pursuant to section 102(2)(C) of the National Enviromental Policy Act of 1969, BLM has prepared an FEIS and Record of Decision for the proposed Bairoil/Dakota CO_2 Projects.

DATES: The FEIS and record of decision will be released February 21, 1986. Comments on the FEIS will be accepted until March 24, 1986. Protests on the decision will be accepted until March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Eugene Jonart (934), BLM, Wyoming State Office, 2515 Warren Ave., P.O. Box 1828, Cheyenne, WY 82003, FTS 328–2219, Comm. (307) 772–2219.

SUPPLEMENTARY INFORMATION: The FEIS analyzes three CO_2 projects. Exxon Company, USA applied for rights-of-way to build and operate a CO_2 pipeline from near Rock Springs, Wyoming, to Tioga, North Dakota. Amoco Production Company applied for rights-of-way for a CO_2 pipeline from near Rock Springs to Bairoil, Wyoming, plus a gas separation plant and various product pipelines and tank facilities at Bairoil. Shell Pipe Line Corporation applied for rights-of-way for a CO_2 distribution pipeline along the Cedar Creek Anticline near Baker, Montana. Each project would include various ancillary facilities. The FEIS which will be available February 21, 1986, is a supplement to the DEIS, which was published September 13, 1985. Reviewed together, the DEIS and FEIS incorporate the analyses of the affected environment and environmental consequences resulting from the proposed projects.

It is the Bureau's intent to implement the record of decision by granting the rights-of-way. The action proposed to be taken may be protested under the terms of 43 CFR 4.450–2. The protest period will run concurrently with the 30-day comment period for the FEIS from the date of filing for the final EIS with the EPA. Comments or protests should be submitted to Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003. All protests should be received no later than March 24, 1986. No actions will be taken by BLM until after the close of the protest and review period.

Copies of the FEIS and record of decision may be obtained at the above address.

Copies of the FEIS may be inspected, and a limited number of single copies may be obtained at the following addresses.

Bureau of Land Management, Public Affairs, Interior Building, 18th and C Street, NW., Washington, DC 20240

Bureau of Land Management, Rawlins District Office, P.O. Box 670, Rawlins, Wyoming 82301

Big Sandy/Salt Wells Resource Area, Gateway Building, 79 Winston Drive, P.O. Box 1170, Rock Springs, Wyoming 82902

Montana State Office, Granite Tower, 222 N. 32nd Street, P.O. Box 36800, Billings, Montana 59107

Bureau of Land Management, Dickinson District Office, P.O. Box 1229, Dickinson, North Dakota 58602

Bureau of Land Management, Casper District Office, 951 N. Poplar Street, Casper, Wyoming 82601

Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82901

Buffalo Resource Area, 300 Spruce Street, Buffalo, Wyoming 82834

Miles City District Office, West of Miles City, P.O. Box 940, Miles City, Montana 59301

Hillary A. Oden,

Wyoming State Director.

[FR Doc. 86–3031 Filed 2–18–86; 8:45 am]

BILLING CODE 4310–22–M

Exchange of Lands; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2(c) that the Burley District is proposing to amend the Cassia Resource Management Plan to allow the exchange of the following described public and private lands:

Exchange Proposal No. 1

T. 14 S., R. 29 E., Boise Meridian, Idaho,
Sec. 14: N½NW¼;
Sec. 27: W½NW¼, SW¼.
320 Acres (Public Land).

T. 14 S., R. 30 E., Boise Meridian, Idaho,
Sec. 16: N½.
320 Acres (Private Land).

Exchange Proposal No. 2

T. 12 S., R. 25 E., Boise Meridian, Idaho,
Sec. 3: N½SW¼, NW¼SE¼.
120 Acres (Public Land).

T. 11 S., R. 25 E., Boise Meridian, Idaho,
Sec. 27: SE¼NE¼, E½SE¼.
120 Acres (Private Land).

The general location of the subject lands in exchange proposal No. 1 is about 20 miles southeast of Idaho and three miles north of Juniper, Idaho. The general location of the subject lands in exchange proposal No. 2 is about 3 miles east of Albion, Idaho.

A land use plan amendment document and a land report will be prepared for the subject lands. The documents will be reviewed by BLM interdisciplinary resource specialists. Public participation will involve the publication of this notice in the **Federal Register** and local newspapers. The adjoining land owners, grazing permittees, County commissioners, the Burley District Grazing Advisory Board and Advisory Council, and the Idaho Fish and Game

Department will be asked for comments. As public controversy is anticipated to be low for the proposed action, no public meetings, hearings or conferences are planned.

The main issue that is anticipated for exchange proposal No. 1 is whether it in the public interest to exchange 320 acres of public land having potential for dryfarming for 320 acres of private land having value for livestock grazing, wildlife habitat, and public access values. The main issue that is anticipated for exchange proposal No. 2 is whether it is in the public interest to exchange 120 acres of public land valuable for livestock grazing but with no legal access for 120 acres of private land valuable for livestock grazing with legal access.

The existing land use plan and maps are available for review at the Burley District Office, Burley, Idaho.

The public may obtain additional information about these exchange proposals by contacting Bureau of Land Management, Attn: Terrance M. Costello, Route 3, Box 1, Burley, Idaho 83318, (208) 678–5514.

Dated: February 6, 1986.

John Davis,

District Manager.

[FR Doc. 86–3765 Filed 2–20–86; 8:45 am]

BILLING CODE 4310-GG-M

[ES 32999]

Realty Action; Proposed Exchange in Itasca County, MN

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The legal description in the Notice published in the **Federal Register**, January 30, 1986, Vol. 51, No. 2, p. 3850–3851, should be corrected as follows:

Under the offered lands line 10 should be T. 61 N., R. 22 W., Sec. 34: *W½SE¼*.

Under the offered lands line 14 should be T. 59 N., R. 27 W., Sec. 35: *SE¼NW¼, SW¼SW¼;* line 18 should be T. 60 N., R. 27 W., Sec. 13: *NE¼SE¼;* lines 39 and 40 which read T. 148 N., R. 25 W., Sec. 1: Lot 5 should be deleted entirely; and line 44 should read T. 148 N., R. 25 W., Sec. 8: *NW¼NW¼*.

FOR FURTHER INFORMATION CONTACT: Milwaukee District Bureau of Land Management, Suite 225, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Bert Rodgers,

Acting District Manager.

[FR Doc. 86–3725 Filed 2–20–86; 8:45 am]

BILLING CODE 4310-PN-M

[NM 63428-OK]

Recreation and Public Purposes Sale in Leflore County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Public sale notice.

SUMMARY: The Tulsa District proposes to dispose of 0.30 acres of public land in LeFlore County, Oklahoma, to the City of Heavener for a water development project under the Recreation and Public Purposes Act.

DATE: For a period of 45 days after the date of publication of this Notice, all persons who wish to submit comments may do so in writing to the District Manager, Bureau of Land Management, 9522–H East 47th Place, Tulsa, Oklahoma, 74145. Objections will be reviewed by the State Director who may sustain, vacate, or modify this ralty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, 405–231–5491.

The following described land has been examined and is classified as suitable for sale under the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 et seq.), and the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1701):

T. 5 N., R. 26 E., Indian Meridian,
Sec. 19: City of Heavener, Second Edition, Block 104, Lot 1.
Approximately 0.30 acres.

The proposed use of the land is for a storage tank. The project is needed to upgrade the City of Heavener's water system to make it more energy-efficient and to improve the water pressure on the east side of the community during peak usage periods. It has been determined that the proposed use is in the public's interest, and is consistent with the Bureau's planning for the land involved in this action.

The patent will be subject to all existing rights and reservations of record, and all minerals will be reserved to the Federal government, excepting coal and asphalt.

Publication of this Notice will segregate the subject land from all appropriations under the public land laws, but not the mineral leasing laws. This segregation will terminate upon issuance of a patent, or 18 months from the date of this Notice, or upon publication of a Notice of Termination.

Jim Sims,

District Manager.

[FR Doc. 86–3726 Filed 2–20–86; 8:45 am]

BILLING CODE 4310-FB-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given the Exxon Company U.S.A. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS–G 1090 and 1091, Blocks 91 to 92, respectively, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on February 10, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certificaiton area also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Ms. Angie Gobert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838–0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OSC Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised governing practices and procedures under which the Minerals Mangement Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties become effective December 13, 1979, (44 FR 53685).

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: February 14, 1986.

J. Rogers Pearcy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-3743 Filed 2-20-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act; Inmont Corp.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on February 13, 1986 a proposed consent decree in *United States* v. *Inmont Corp.* et al., Civil Action No. 86-0029-B was lodged with the United States District Court for the District of Maine. The proposed consent decree concerns the release of hazardous substances from a landfill/dump located in Winthrop, Maine. The proposed consent decree requires Inmont Corporation to pay the United States $400,000 as reimbursement for response costs incurred by the United States. The consent decree also obliges the defendants to undertake various response actions at the landfill and surrounding area in order to remedy the hazardous conditions presented by releases from the landfill.

The Departmnt of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Inmont Corp.*, et al. DJ Ref. 90-11-2-130.

The proposed consent decree may be examined at the office of the United States Attorney, District of Maine, Federal Building, Room 321, Bangor, Maine 04401 and at the Region I Office of the United States Environmental Protection Agency, Office of Regional Counsel, J.F. Kennedy Federal Building, Boston, Mass. 02203. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. If requesting a copy of the consent decree, please enclose a check in the amount of $3.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division.

[FR Doc. 86-3766 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Judgment Pursuant to Clean Air Act; Jefferson Smurfit Corp. et al.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on February 19, 1986, a proposed consent judgment in *United States* v. *Jefferson Smurfit Corporation, et al.*, Civil Action No. C-8-84-1617, was lodged with the United States District Court for the Southern District of Ohio. The proposed consent judgment requires the Jefferson Smurfit Corporation, *inter alia*, to comply with the Ohio State Implementation Plan and the Clean Air Act by installing pollution control devices on their rotogravure presses. The devices must be installed by January 31, 1987, and compliance demonstrated by March 31, 1987. The company must also pay a cash penalty of $120,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jefferson Smurfit Corporation, et al.*, D.J. Ref. 90-5-2-1-696.

The proposed consent judgment may be examined at the office of the United States Attorney, Southern District of Ohio, 220 U.S. Post Office and Courthouse, 5th and Walnut Streets, Cincinnati, Ohio 45202, and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Department of Justice, Environmental Enforcement Section, Land and Natural Resources Division, Room 1515, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed consent judgment may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to *United States* v. *Jefferson Smurfit Corporation, et al.*, D.J. Ref. 90-5-2-1-696, and include a check in the amount of $1.80 ($0.10 per page reproduction charge) payable to the United States Treasury.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-3908 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-04-M

Lodging of Consent Decree Pursuant to the Clean Water Act in United States v. City of Rogersville and the State of Tennessee

In accordance with Departmental policy, 28 CFR 50.7., notice is hereby given that on *February 6, 1986* a proposed Consent Decree in *United States* v. *City of Rogersville and the State of Tennsessee,* Civil Action No. CIV-2-85-175 was lodged with the United States District Court for the Eastern District of Tennessee. The Complaint in this enforcement action was filed on April 30, 1985 against the city of Rogersville ("City") and the State of Tennessee under section 309 of the Clean Water Act ("the Act"), 33 U.S.C. 1319, seeking civil penalties and injunctive relief for the city's discharge of pollutants from its sewage treatment plant ("STP") into the Holston River in violation of sections 301 and 402 of the Act, 33 U.S.C. 1311 and 1342. The proposed Consent Decree ("Decree") requires that the city comply with a schedule or plan for upgrading of its STP and institute immediate remedial actions designed to bring the city into full compliance with final effluent limitations established in its National Pollutant Discharge Elimination System ("NPDES") permit by October 15, 1987.

The decree sets interim effluent limitations at levels which should provide maximum pollution abatement pending completion of required repairs, modifications and improvements to the sewage treatment plant. The city is also required to retain the services of a qualified operations consultant to assure that its STP is operated at optimum efficiency during the compliance period and the city must rehabilitate those portions of its sewer lines with the highest infiltration and inflow problems by July 31, 1986. Finally, the decree provides for payment by the city of a $20,000,000 civil penalty for past violations of the Clean Water Act.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Rogersville et al.*, D.J. Ref. 90-5-1-1-2274.

The proposed Consent Decree may be examined at the office of the United States Attorney, 318 Federal Building, 101 W. Summer Street, Greenville, Tennessee and at the United States Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Room 1521, U.S. Department of Justice, 9th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting a copy, please enclose a check in the amount of $2.10 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-3792 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Ruth Bailey, D.O.; Revocation of Registration

On October 18, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed on order to show cause to Ruth Bailey, D.O., Four Brook Street, Scituate, Massachusetts. The order sought to revoke DEA Certificate of Registration AB1900124 issued previously to Dr. Bailey. The statutory predicate for the order to show cause was the suspension of Dr. Bailey's medical license, effective October 1, 1985, by the Massachusetts Board of Registration in Medicine, thereby terminating her authority to possess, dispense; prescribe, administer or otherwise handle controlled substances in Massachusetts.

A registered mail receipt shows that the order to show cause was received on October 24, 1985, and thus was returnable on or before November 25, 1985. No response was forthcoming from Dr. Bailey. Therefore, the Administrator finds that Dr. Bailey waived her opportunity for a hearing on the issues raised by the order to show cause and enters this final order on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator is permitted to register a practitioner under 21 U.S.C. 823 only if the practitioner is authorized to handle controlled substances under the law of the State in which he practices. The Administrator cannot lawfully register a practitioner who lacks state authorization to handle controlled substances. This precedent has been consistently followed by this Administrator and his predecessors. See *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208 (1985); *Floyd A. Santner, M.D.*, Docket No. 79-23, 47 FR 51831 (1982); *David Sachs, M.D.* Docket No. 77-2, 44 FR 29112 (1977).

The Administrator finds that the Massachusetts Board of Registration in Medicine, the regulatory body responsible for licensing physicians in Massachusetts, indenfinitely suspended Dr. Bailey's authority to handle controlled substances under Massachusetts law. Therefore, the Administrator cannot register Dr. Bailey, and must revoke the Certificate of Registration, AB1900124, previously issued to her.

The Administrator notes that the order to show cause also alleged that Dr. Bailey's continued registration would be inconsistent with the public interest. The Administrator need not reach that ground, since lack of state authorization summarily disposes of the Matter. However, the Administrator is in total accord with the decision of the Massachusetts Board. As late as August, 1985, Dr. Bailey sold a prescription for a Schedule II narcotic without any medical justification to a DEA Special Agent acting in an undercover capacity. Should the Board lift its suspension of Dr. Bailey's license, DEA will commence action again to deny any application for registration which she might file.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 823, and redelegated to the Administrator in 21 U.S.C. 871 and 28 CFR 0.100, the Administrator hereby revokes DEA Certification of Registration AB1900124 previously issued to Ruth Bailey, D.O., and denies any pending applications for registration for reason that Dr. Bailey is without authorization to handle controlled substances in Massachusetts. Since Dr. Bailey is without lawful authority to practice medicine or handle controlled substances in any manner, this order is effective upon publication.

Dated: February 18, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-3821 Filed 2-20-86; 8:45 am]

BILLING CODE 4410-09-M

Richard T. Lowe, M.D.; Revocation of Registration

On November 1, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued to Richard T. Lowe, M.D. of 807 19th Street, Haleyville, Alabama 35565 (Respondent), an Order to Show Cause proposing to revoke DEA Certificate of Registration AL0478138, and to deny his application, executed March 27, 1985, for registration as a practitioner under 21 U.S.C. 823(f). The statutory predicate for the proposed action is that Respondent is not authorized to handle controlled substances in the State of Alabama due to the revocation of his Alabama controlled substances registration certificate on August 15, 1984.

In a letter dated November 25, 1985, Respondent specifically waived his opportunity for a hearing and set out a statement regarding his position on the matters of fact and law involved. 21 CFR 1301.54(c). The Administrator has considered the entire investigative file in this matter, including Respondent's written statement, and hereby issues this final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator finds that on August 15, 1984, the State of Alabama, Board of Medical Examiners ordered the revocation of the Alabama controlled substance registration certificate issued to Richard T. Lowe, M.D. The revocation of Respondent's registration certificate came as a result of a state investigation into Respondent's prescription practices. The Alabama Board found that, between April 1983 and June 1984, Respondent had excessively dispensed controlled substances to ten individuals for no legitimate medical purpose. During a four month period, almost nine hundred

prescriptions for controlled substances were written by Respondent.

On September 13, 1984, DEA requested from Respondent the voluntary surrender of his controlled substances registration. On September 20, 1984, Respondent's counsel advised DEA that an appeal of the Alabama Board's ruling was filed on September 13, 1984 in the Montgomery County Circuit Court and that Respondent would not, therefore, voluntarily surrender his controlled substances privileges. On September 30, 1985, a joint motion to dismiss Respondent's appeal was granted by the Montgomery County Circuit Court.

In his November 25, 1985 letter in response to the Order to Show Cause, Respondent indicated that he was currently under consideration for reinstatement of his controlled substance registration certificate in Alabama, and that he had complied with his agreement with the Board. He also stated that he has not prescribed controlled substances in approximately two years.

The Administrator finds that Respondent is not authorized to handle controlled substances in the State of Alabama since the Board of Medical Examiners revoked his state registration certificate. The Administrator has consistently held that when a DEA registrant is not authorized to handle controlled substances under the laws of the state in which he practices, DEA is without lawful authority to maintain a registration. See *Avner Kaufman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985), *Kenneth K. Birchard, M.D.*, 48 FR 33778 (1983), and *Thomas E. Woodson, D.O.*, Docket No. 81–4, 47 FR 1353 (1982).

Finally, the Administrator finds the fact that the reinstatement of Respondent's state registration is pending irrelevant to the present action. Respondent is not currently authorized to handle controlled substances in the State of Alabama. At this time, there is a lawful basis for the revocation of Respondent's registration.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AL0478138, issued to Richard T. Lowe, M.D., be, and hereby is revoked effective March 24, 1986. Any outstanding applications for renewal for that registration are hereby denied.

Dated: February 18, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86–3822 Filed 2–20–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 85–49]

William J. Powell, M.D., Richardson, TX; Hearing

Notice is hereby given that on October 1, 1985, the Drug Enforcement Administration, Department of Justice, issued to William J. Powell, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AP2238500, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Wednesday, March 5, 1986, in the Fifth Floor Courtroom, 17th District Court, Civil Courts Building, 100 Houston Street, Fort Worth, Texas.

Dated: February 18, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–3823 Filed 2–20–86; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statues referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by

writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York:
NY86–1 (Jan. 3, 1986)..... p. 642.
NY86–10 (Jan. 3, 1986)..... pp. 727–728.
NY86–17 (Jan. 3, 1986)..... pp. 777–778.
Pennsylvania
PA86–2 (Jan. 3, 1986)..... p. 804.
PA86–5 (Jan. 3, 1986)..... pp. 829–831.
PA86–6 (Jan. 3, 1986)..... p. 843.
PA86–11 (Jan. 3, 1986)..... p. 885.
PA86–17 (Jan. 3, 1986)..... p. 906.
PA86–20 (Jan. 3, 1986)..... pp. 926–927.
PA86–22 (Jan. 3, 1986)..... pp. 937–938, p. 940.
Puerto Rico:
PR86–1 (Jan. 3, 1986)..... p. 959.
West Virginia:
WV86–2 (Jan. 3, 1986)..... p. 1124.

Volume II

Illinois:
IL86–7 (Jan. 3, 1986)..... p. 127.
Iowa:
IA86–5 (Jan. 3, 1986)..... p. 45.
Michigan:
MI86–7 (Jan. 3, 1986)..... pp. 446, 448.
MI86–14 (Jan. 3, 1986)..... p. 480.
Minnesota:
MN86–5 (Jan. 3, 1986)..... p. 497.
MN86–7 (Jan. 3, 1986)..... p. 507–511.
MN86–8 (Jan. 3, 1986)..... p. 525, pp. 527–529.
Nebraska:
NE86–1 (Jan. 3, 1986)..... p. 618.
Ohio:
OH86–1 (Jan. 3, 1986)..... pp. 665–666, pp. 669–670.
OH86–2 (Jan. 3, 1986)..... pp. 676–686, pp. 691–692.
OH86–4 (Jan. 3, 1986)..... p. 704.
OH86–19 (Jan. 3, 1986)..... pp. 733–734.
OH86–28 (Jan. 3, 1986)..... pp. 752–754.
OH86–29 (Jan. 3, 1986)..... pp. 764–765, p. 782.
Oklahoma:
OK86–15 (Jan. 3, 1986)..... pp. 839a–839c.
Texas:
TX86–4 (Jan. 3, 1986)..... p. 852.
Wisconsin:
WI86–4 (Jan. 3, 1986)..... p. 956.
WI86–9 (Jan. 3, 1986)..... p. 986.

Volume III

Alaska:
AK86–1 (Jan. 3, 1986)..... pp. 2–5.
California:
CA86–2 (Jan. 3, 1986)..... pp. 45–48, pp. 53–54.
CA86–4 (Jan. 3, 1986)..... pp. 65–68, pp. 71, 73, pp. 75–76, pp. 80–84, p. 95.
Nevada:
NV86–1 (Jan. 3, 1986)..... p. 213–215.
NV86–2 (Jan. 3, 1986)..... pp. 236–239.
NV86–4 (Jan. 3, 1986)..... p. 247, pp. 249–250.
North Dakota:
ND86–2 (Jan. 3, 1986)..... p. 209, pp. 211–212.
Oregon:
OR86–1 (Jan. 3, 1986)..... p. 259, 266.
Utah:
UT86–1 (Jan. 3, 1986)..... pp. 282–284, pp. 286–287.
Washington:
WA86–1 (Jan. 3, 1986)..... p. 313.
WA86–4 (Jan. 3, 1986)..... p. 354.
Listing by Location (Index)..... pp. xxi–xxii.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State (s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 14th day of February 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86–3703–Filed 2–20–86; 8:45 am]

BILLING CODE 4501–27–M

Occupational Safety and Health Administration

[V–85–2]

AMAX Lead Company of Missouri

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of Change of Hearing Date on Application for Permanent Variance.

SUMMARY: This notice announces a change of the hearing date of the application of AMAX Lead Company of Missouri for a permament variance from Table II of the standard prescribed in 29 CFR 1910/1025(f)(2). The variance application concerns the limitation on use of half-mask, air-purifying respirators to areas where the lead concentration in air is less than 10 times the permissible exposure limit (PEL).

The notice announcing the application for a permanent variance was published in the **Federal Register** on April 16, 1985 (50 FR 15004). The notice of hearing on the application, which announced the date and place for the hearing, summarized the record to date, set forth the issues for the hearing, and the procedures for participation, was published in the **Federal Register** on October 8, 1985 (50 FR 41039). A notice announcing a deferral of that hearing date from December 4, 1985, to February 25, 1986, was published in the **Federal Register** on November 22, 1985 (50 FR 48282). This notice announces a deferral of that hearing date from February 25, 1986, to May 6, 1986, by order of the hearing examiner, the Honorable Daniel J. Roketenetz.

DATE: The hearing will begin at 9:30 a.m. on May 6, 1986, at the Federal Building, Courtroom No. 1, Room 516, U.S. Court of Appeals, U.S. Courthouse and Custom House, 1114 Market Street, St. Louis, Missouri 63101.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, U.S. Department of Labor, Room N–3656, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: 202–523–7193.

Authority: This document was prepared under the direction of Patrick R. Tyson, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(Sec. 6, 84 Stat. 1593 (29 U.S.C. 655); 29 CFR Part 1911; and Secretary of Labor's Order No. 9–83 (48 FR 35736))

Signed at Washington, DC, this 18th day of February, 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-3811 Filed 2-19-86; 2:32 pm]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

[Application No. D-6270 et al.]

Proposed Exemptions; Kenneth M. Spain, D.D.S., M.S., P.C. Pension Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Kenneth M. Spain, D.D.S., M.S., P.C. Pension Plan (the Plan) Located in Bozeman, Montana

[Application No. D-6270]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the plan of a parcel of unimproved real property from Donna M. Spain (Mrs. Spain), a trustee of the Plan, provided that such transaction is on terms at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with three participants and total net assets of $118,252.26 as of April 30, 1984. The Plan is sponsored by Kenneth M. Spain, D.D.S., M.S. P.C. (the Employer), which is totally owned by Kenneth M. Spain, D.D.S. (Dr. Spain), who is also a participant and trustee of the Plan and Mrs. Spain's spouse. The Employer is a Montana professional Corporation engaged in the practice of general dentistry. Investment authority with respect to Plan assets rests with the Plan's trustees, Dr. & Mrs. Spain (the trustees).

2. The current Plan assets, primarily bonds and stocks, do not include any investments in real property, and the Trustees have determined that the Plan assets are in need of diversification which could be achieved by a prudent and appropriate investment in real property. Mrs. Spain is in possession of a parcel of unimproved real property (the Property) which is available for sale and which is particularly attractive to the Spains (as Trustees) as an investment for the Plan due to favorable investment conditions affecting the Property. The Trustees are requesting an exemption to permit the Plan's purchase of the Property from Mrs. Spain under the terms and conditions described herein.

3. The interests of the Plan with respect to the proposed transaction are represented by an independent fiduciary, Burton Wastcoat (the Fiduciary), who represents himself to be independent of and unrelated to the Employer and the Trustees. The Fiduciary is a real estate broker who represents tht he is sufficiently familiar with the fiduciary responsibility provisions of the Act and that he has conferred with counsel knowledgeable with the Act. The Property is a vacant, unencumbered residential lot of 17,000 square feet in a developing subdivision of Bozeman, Montana, and is identified as Lot 34, Graf's Second Addition, Bozeman. The Trustees represent that the Property is particularly attractive to achieve the Plan's diversification into real property for the following reasons: (1) The greater metropolitan area of Bozeman is experiencing substantial economic growth, creating substantial building activity which is creating an increasing demand for vacant residential lots; (2) The recent increased demand has resulted in a shortage of residential building lots in the area; (3) The Property is unique and likely to remain a choice residential building site because it is a hillside lot which will retain an unobstructed view even after development of the surrounding lots; and (4) The property is located near certain developing property which will become Bozeman's only hospital complex, adding to the Property's potential value upon eventual resale by the Plan. The Trustees intend that the Plan will hold the Property for its appreciation and do not intend that the Plan will develop the Property.

4. The Fiduciary has investigated the Property, its surrounding conditions and the residential development market of the area, and as a result of such investigation confirms the aforementioned positive conditions currently affecting the Property and rendering it attractive as a real estate investment. The Fiduciary projects steady appreciation of the Property for the foreseeable future, characterizing the Property's location as excellent, and he notes that the Property is particularly valuable as a site for a residential structure featuring solar energy. It is proposed that the Plan will pay Mrs. Spain a cash purchase price of $18,000 for the Property, such amount representing the Property's appraised fair market value as of June 3, 1983, according to an appraisal performed by Robert K. Powell (Powell), an independent professional real estate appraiser in Bozeman, Montana. Powell's appraisal will be updated as of the date of the sale, and if he finds the Property has decreased in value the purchase price paid by the Plan will be the lower appraisal value. In no event, however, will the Plan's purchase price exceed $18,000. The Fiduciary has determined that Powell's appraisal of the Property is fair. The Trustees represent that Mrs. Spain is willing to sell the Property to the Plan for a price representing the 1983 appraised value because her spouse is the primary beneficiary/participant of the Plan, even though it is likely the Property has increased in value since Powell's appraisal. After an examination of the Plan's current assets, the Fiduciary has determined that the Plan assets, otherwise soundly invested, are in need of diversification and that the Plan's investment in Property will achieve this needed diversification while providing an appropriate and promising investment asset for the Plan. The Fiduciary will oversee the proposed sale transaction to ensure that it proceeds as described herein. All expenses related to the sale transaction will be borne by Mrs. Spain, who will also insure title to the Property as free and clear.

5. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (1) The Plan is in need of diversification which can be achieved by acquisition of the Property; (2) The Property is a promising investment for the Plan due to a combination of positive factors such as its uniqueness, its location, and the residential real estate market of the surrounding area; (3) The interests of the Plan with respect to the proposed transaction are represented by an independent fiduciary who has determined that the proposed transaction will be in the best interests of the Plan; and (4) Mrs. Spain, the seller, will bear all expenses of the proposed transaction.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Richland Corporation Pension Plan (the Plan) Located in Dallas, Texas

[Application No. D–6403]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedures 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the contribution to the Plan of certain improved real property (the Property) by the Richland Corporation (Richland), the Plan sponsor, provided the Property will be valued for contribution purposes at no greater than its fair market value at the time of contribution.

Summary of Facts and Representations

1. Richland is a family-owned beverage sales and distribution company located in Dallas, Texas. All of the Richland stock is owned by Manny B. Zelzer, who is president of Richland. The Plan is a defined benefit pension plan with 5 participants. As of October 2, 1984, the Plan had assets with a fair market value of $472,125. Manny Zelzer and his daughter Martha are the Plan trustees.

2. Richland proposes to contribute the Property to the Plan in lieu of a portion of Richland's cash contribution for the fiscal year ending September 30, 1985. Richland proposes to contribute the Property, together with cash equal to the difference between the minimum required contribution and the appraised fair market value of the Property.

3. The Property consists of a convenience store and the underlying real property located at 112 Sam Houston Drive, Victoria, Texas. The store is subject to a lease to Circle K Corporation (Circle K), a publicly owned corporation whose headquarters are in Phoenix, Arizona. Circle K is totally unrelated to Richland. Circle K is the second largest operator of convenience stores in the United States and operates a chain of convenience stores, in the South, the West and the Midwest. The subject store was purchased by Richland from Circle K for $70,356 on April 24, 1974. The store was leased back to Circle K pursuant to a separate agreement made at the time of the sale. The Property is not subject to a mortgage. The Property consists of 0.482 acres with a building containing 2,850 square feet. All trade fixtures located in the store were installed by and will remain the property of Circle K after expiration of the lease.

4. The lease to Circle K, which was executed on April 24, 1974, is for a term of 20 years, with three renewal options not to exceed five years each. The lease is a percentage rent lease with a minimum monthly rental of $557, or $6,684 per year. Circle K is required to pay an additional bonus rental of any amount by which 2% of the store's gross sales for the year exceeds the minimum annual rent plus the sum of the real estate taxes and insurance premiums on the leased premises for the year. Over the last six years, the average bonus payment under the leases amounted to $6,701.94 with an average total annual rental of $13,385.94. The lease is a triple net lease which makes Circle K responsible for most costs associated with the Property, including all real estate taxes and assessments, all personal property taxes levied on any of Circle K's property which is located on the premises and all utility charges Circle K is also required to pay the cost of insurance coverage for the Property. No management services are required of or performed by Richland under the lease. The lease grants Circle K a first option to purchase or lease the Property on the same terms that the lessor proposes to sell or lease to a third party Circle K has a right to sublet the Property, but remains liable for all payments and performance of all obligations contained in the lease.

5. The Property has been appraised by Mark Mellard, MAI, of the Ron Brown Company, an independent appraiser in Victoria, Texas, as having a fair market value as encumbered by the lease of $100,000 as of September 24, 1985.

6. For purposes of the transaction, the Plan has retained Mr. Ronald S. Fiedelman (Fiedelman) as an independent fiduciary. Fiedelman has been a CPA and a financial adviser since 1960. He had 25 years of extensive experience in analyzing potential real estate investments for his clients, as well as generating tax projections for several real estate syndications. He has also assisted numerous clients in establishing various qualified plans

Accordingly, Fiedelman represents that he is extremely familiar with real estate transactions and requirements of the Act with respect to qualified plans. Fiedelman represents that he understands and accepts his obligations, responsibilities and potential liabilities as a fiduciary under the Act. Fiedelman also represents that he is totally unrelated to Richland, and his sole business relationship with Richland and the Zelzers consists of his role as independent Plan fiduciary with respect to the subject transaction.

7. Feidelman represents that his review of the proposed transaction has included: (a) The size of the investment base; (b) the composition of the portfolio of the Plan with regard to diversification; (c) the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the Plan; (d) the projected return of the Plan portfolio relative to the funding objectives of the Plan; (e) the terms of the contribution; and (f) the appraisal of the Property and lease agreement to which the Property is subject. Based on his review considering these factors and considering the risk of loss and opportunity for gain associated with the Property, Fiedelman believes that the Property investment is reasonably designed as part of the Plan portfolio to further the purposes of the Plan. Fiedelman thus represents that he has determined that the proposed contribution of the Property would be protective of all rights of the Plan participants and in the best interests of the Plan and its participants and beneficiaries.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) the Property represents less than 25% of the Plan's assets; (b) the Property has been appraised by a qualified independent appraiser; and (c) Feidelman, the Plan's independent fiduciary, has determined that the proposed transaction is appropriate for the Plan and in the best interests of its participants and beneficiaries.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The Optical Corporation of America, Inc. Restated Retirement Plan (the Plan) Located in Louisville, Kentucky

[Application No. D-6420]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed sale to the Plan of one parcel of improved real property (the Property) by FoCal Reality Company (FoCal), a party in interest with respect to the Plan; and (2) the proposed lease (the Lease) of the Property to Optical Corporation of America, Inc. (Optical), a party in interest with respect to the Plan; provided that the sales price is not greater than the fair market value of the Property and that the terms and conditions of the proposed transactions are at least as favorable to the Plan as those obtainable from an unrelated third party.

Summary of Facts and Representations

1. The Plan is a defined beneft pension plan with total assets of $4,077,324 as of June 30, 1985. As of July 1, 1984, the Plan had 172 participants, including Frank B. Sanning (Mr. Sanning) and H. Lyle Duerson (Mr. Duerson). The named fiduciary for the Plan is a retirement committee of which Mr. Duerson is the chairman. The trustee for the Plan is the First Kentucky Trust Company (First Kentucky) which has discretionary authority to direct the investments of the Plan.

2. The sponsoring employer of the Plan is Optical, a Kentucky corporation with principal offices located in Louisville, Kentucky. Optical's three wholly-owned subsidiaries, Kentucky Optical Company, Lugene, Inc., and Southern Optical Company (Southern), are participating employers of the Plan. Southern's subsidiaries, Southern Optical Hearing Aid Center, Inc., and SCL Laboratories, Inc., are also participating employers of the Plan.

3. Prior to July 1, 1985, Mr. Duerson and Mr. Sanning owned approximately equal interests in Optical totaling about 54% of outstanding shares. As of July 1, 1985, Mr. Sanning retired from employment as president of Optical, and Optical redeemed his shares. After the redemption, Mr. Duerson became the principal shareholder of Optical with approximately 36-37% of the outstanding shares. Mr. Duerson is the Chairman of the Board of Optical and currently performs the duties of the chief executive officer of Optical, since no successor to Mr. Sanning as president of Optical has been named to date.

4. The Property is a four story multi-use office building with full basement, located at 640 South 4th Avenue, Louisville, Jefferson County, Kentucky and is situated in the heart of the Broadway Renaissance Project (the Project), a downtown Louisville historical and commercial redevelopment project. As part of the Project, modifications on the facade of the Property will be made. The Property was constructed in 1915 and was purchased in November 1962 by FoCal. FoCal is a Kentucky corporation of which Mr. Duerson and Mr. Sanning each own 50% of the outstanding shares. Mr. Sanning and Mr. Duerson, as the owners of FoCal, propose to sell the Property to the Plan for $950,000. Thereafter, Optical proposes to enter into the Lease of the Property with the Plan.

5. First Kentucky, as of Novemer 13, 1985, acknowledged and assumed the role of independent fiduciary with respect to the subject transactions. First Kentucky maintains its independence to act as independent fidicuary on behalf of the Plan for the following reasons: (a) No officer or employee of First Kentucky is a member of the board of directors of Optical, and no officer or employee of Optical is a member of the board of directors of First Kentucky; (b) no shareholder of Optical owns any substantial interest in First Kentucky, and no shareholder of First Kentucky owns any substantial interest in Optical; and (c) First Kentucky has no trust relationships with FoCal. It is represented that the individual trust accounts of Mr. Duerson and Mr. Sanning and the Plan's trust account with First Kentucky constitute approximately twelve hundredths of one percent (.12%) of First Kentucky's approximately $4 billion in trust assets. While Optical has a line of credit of $400,000 with the First National Bank of Louisville (the Bank), an affiliate of First Kentucky, and Mr. Duerson has an outstanding demand loan obligation of $10,000 with the Bank, such loan obligation and line of credit constitute approximately two hundredths of one percent (.02%) of the Bank's loan portfolio which was in excess of $2 billion for 1984.

6. Two appraisals of the value of the Property were submitted with the application. The first was prepared on November 14, 1984, at the request of Mr. Duerson by Mr. Ronnie L. Galloway (Mr. Galloway), M.A.I., S.R.P.A., of Galloway Appraisal Company in Louisville, Kentucky. Mr. Galloway appraised the Property at $930,000. The second appraisal was prepared on April 12,

1985, at the request of First Kentucky by Mr. Lin E. Bell (Mr. Bell), M.A.I., S.R.P.A., with the assistance of Mr. C. Marty Michaels (Mr. Michaels), who inspected the Property and prepared the analysis. Both Mr. Bell and Mr. Michaels are employed by Chapman and Company in Louisville, Kentucky. Mr. Bell appraised the fair market value of the Property to be $975,000, assuming that the existing facade on the Property had been renovated and restored to original condition. Mr. Galloway, Mr. Bell, and Mr. Michaels represent that they are independent in that they have no present or future contemplated interest in the Property and that they have no personal interest or bias with respect to the Property or the parties involved.

7. First Kentucky represents that the $950,000 sales price for the Property sufficiently approximates the fair market value of the Property based upon consideration of the two appraisals. The $950,000 sales price constitutes 23% of the current assets of the Plan. It is represented that the acquisition of the Property by the Plan would not imperil or unduly affect the diversity or liquidity of the Plan's investments. Over 29% of the value of the Plan's current assets are invested in cash equivalents, such that the Plan will not have to liquidate longer-term investments prior to maturity in order to purchase the Property. Further, it is represented that the Property would be the Plan's only illiquid investment in real estate. FoCal and not the Plan, has agreed to pay up to $50,000 of the cost of facade improvements on the Property required under the terms of the Project and the remaining cost of facade improvements, if any, will be paid for by Optical. It is represented that FoCal will take no commission on the sale, and all closing costs, fees, and other charges attendant upon the sale will be borne either by FoCal or Optical and not by the Plan.

8. Mr Bell has also appraised the fair market rental value of the Property. Mr. Bell states that, excluding the basement, the total gross area (exterior measurement) of the Property is 32,434 square feet of which approximately 27,228 square feet is rentable. Mr. Bell states that the current net economic rent for the Property on a triple net basis should be in the range of $3.55 per square foot or approximately $96,769.

9. First Kentucky has on behalf of the Plan negotiated the Lease with Optical, the terms of which are summarized below:

(i) The entire Property will be leased to Optical for the term of 10 years with one 5-year renewal option.

(ii) The rental will be $95,000 per year for the first 5 years, with an increase of 10% to $104,500 for years 6–10. The rental rate for the 5-year option term (years 11–15) will be based upon the appraised fair market rental value as determined in 10th year before the beginning of the option period by an appraiser mutually agreed upon by First Kentucky and Optical.

(iii) The Lease will be triple net "plus" in that Optical will pay not only the costs of operation, ordinary repair and maintenance, insurance, and all real estate taxes, but also will pay for structural improvements and repairs to the Property.

(iv) Optical will be empowered to sublet any portion of the Property which it does not use but will be required to provide for the upkeep and operation of common areas made necessary by the presence of more than one tenant on the Property. The Plan and First Kentucky will have power of approval over such subletting but may not unreasonably withhold such approval.

(v) Under the Lease, the Plan and First Kentucky will have the powers of management necessary to assure that Optical carries out its promises and covenants under the Lease, but Optical will be obligated to engage in the actual day-to-day operational management of the Property.

10. First Kentucky represents that the proposed Lease is in the best interest of the Plan and its participants and beneficiaries in that (1) the Plan is obtaining at no cost the benefit of structural improvements on the Property; (2) the proposed Lease would generate a 10% income return to the Plan on its investment in the Property during the first 5 years of the Lease and an 11% income return in years 6–10; and (3) the negotiated rental rate of return when taken into account with the other Lease terms approximates the fair market rental value on the Property.

11. As independent fiduciary, First Kentucky, has taken the following actions with respect to the proposed transactions: (a) It has required and obtained an independent appraisal of the value of the Property and of the fair market rental rate by an appraiser of its own chosing; (b) it has negotiated at arm's-length with Optical and FoCal regarding the terms of the proposed transactions; and (c) It has made an independent determination that the proposed transactions would be within the requirement of prudence regarding the investments of the Plan's assets and would be in the interests of the Plan and protective of the rights of the participants and beneficiaries of the Plan.

12. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (a) The purchase price of the Property and the initial rental rate were based upon consideration of independent appraisals; (b) the future rental rates under any renewal option on the Lease will be determined by an independent appraiser; (c) the terms and conditions of the proposed transactions have been reviewed and negotiated by First Kentucky, the independent fiduciary of the Plan; and (d) First Kentucky has determined that the proposed transactions are in the best interest of the Plan and protective of the participants and beneficiaries of the Plan.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404, and 415.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of February, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-3857 Filed 2-20-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Challenge Section) to the National Council on the Arts will be held on March 10, 1986 from 9:00 a.m. to 5:30 p.m., Room M0-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3789 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Overview Meeting) to the National Council on the Arts will be held on March 11, 1986 from 9:00 am-7:00 pm in Room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 11, 1986, from 9:00 am-5:30 pm, to discuss Guidelines for Dance and Dance/InterArts/State Presenting & Touring Initiative, the budget and miscellaneous policy questions.

The remaining session of this meeting on March 11, 1986, from 5:30 pm-7:00 pm are for the purpose of Application review udner the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1110 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. john H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3790 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Folk Arts Section) to the National Council on the Arts will be held on March 13, 1986 from 9:00 a.m.-5:30 p.m., March 14, 1986 from 9:00 a.m.-5:30 p.m. and March 15, 1986 from 9:00 a.m.-4:00 p.m. in Room 716 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on March 15, 1986, from 9:00 a.m.-10:30 a.m., to discuss Policy and guidelines.

The remaining sessions of this meeting on March 13, 1986 and March 14, 1986 from 9:00 a.m.-5:30 p.m. and March 15, 1986 from 10:30 a.m.-4:00 p.m. are for the purpose of Application review under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86-3792 Filed 2-20-86; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Services/Artists Colonies Section) to the National Council on the Arts will be held on March 12, 1986 from 9:30 a.m. to 6:00 p.m., March 13, 1986 from 9:30 a.m. to 5:30 p.m. and March 14, 1986 from 9:00

a.m. to 3:00 p.m., Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open on March 14, 1986 from 11:00 a.m. to 3:00 p.m. Topics for discussions will be guidelines and policy.

The remaining sessions of this meeting on March 12, 1986 from 9:30 a.m. to 6:00 p.m., March 13, 1986 from 9:30 a.m. to 5:30 p.m. and March 14, 1986 from 9:00 a.m. to 11:00 a.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and 9(B) of section 552b of Title 5, United States Code.

If you need accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5433.

Yvonne M. Sabine,

Acting Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 86–3791 Filed 2–20–86; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357–9421

OMB Desk Officer: Carlos Tellez, (202) 395–7340

Title: Personal Data Questionnaire

Affected Public: Individuals

Number of Responses: 3,000 responses; total of 150 burden hours.

Abstract: Data are required to ensure compliance with laws cited in Part I and regulations cited in Part III. Data will be used to analyze Foundation recruitment and selection practices and/or to defend the Foundation's practices in discrimination cases.

Dated: February 18, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86–3846 Filed 2–20–86; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Babcock and Wilcox Water Reactors; Postponed

The ACRS Subcommittee on Babcock and Wilcox Water Reactors scheduled for February 25, 1986 has been postponed until early April. This meeting notice was previously published in the **Federal Register** (51 FR 4833) on February 7, 1986.

Dated: February 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–3853 Filed 2–20–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee On Reactor Safeguards, Subcommittee on Spent Fuel Storage Facility Design; Meeting

The ACRS Subcommittee on Spent Fuel Storage Facility Design will hold a meeting on March 12, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, March 12, 1986—1:30 P.M. until the conclusion of business.*

The Subcommittee will review a proposed revision to 10 CFR Part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High Level Radioactive Waste."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and question s may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–3851 Filed 2–20–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Standard Plant Design; Meeting

The ACRS Subcommittee on Standard Plant Design will hold a meeting on March 12, 1986, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, March 12, 1986—8:30 a.m. until the conclusion of business

The Subcommittee will continue discussion of standard plants. Particularly, FAA certification, GE power worthiness, industry perceptions, DOE views, and an update on a policy statement.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring

to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Herman Alderman (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 18, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–3852 Filed 2–20–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Revised Notice of Meeting

An additional topic has been scheduled for the February 26, 1986 ACRS Subcommittee on Emergency Core Cooling Systems, 8:30 A.M., Room 1046, 1717 H Street, NW., Washington, DC. This meeting notice was previously published in the **Federal Register** (51 FR 5007) on February 10, 1986. The other items regarding this meeting remain the same as previously published.

Topics for discussion:

(1) Review Duke Power Company's request to delete use of the ECCS UHI system.

(2) The AEOD Report on inadvertent overpressurization of the low-pressure portion of the ECCS systems for BWRs, and the NRR Action Plan that encompasses this issue.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634–3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: February 14, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86–3854 Filed 2–20–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–352–OLA; ASLBP No. 86–522–02–LA]

Philadelphia Electric Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 28, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Philadelphia Electric Company, Limerick Generating Station, Unit No. 1, Facility Operating License No. NPF–39

This Board is being established pursuant to a notice published by the Commission on December 26, 1985 in the **Federal Register** (50 FR 52874) entitled, "Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing." The amendment would revise the Technical Specifications to allow a one-time-only extension of time to satisfy a limited number of testing requirements for the excess flow check valves in certain instrumentation lines which must be performed every 18 months and which require a plant shutdown.

The Board is comprised of the following Administrative Judges:

Ivan W. Smith, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 12th day of February 1986.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 86–3855 Filed 2–20–86; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Agency Information Collection Activities Under OMB Review

AGENCY: Peace Corps.

ACTION: Notification of extension request of Peace Corps Candidate Selection Inventory.

SUMMARY: The information collection inventory described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Current authorization for use of the subject inventory expires March 31, 1986. In accordance with OMB instructions, Peace Corps wishes to continue research into the effectiveness of the subject inventory as a selection tool. This request then is for a continuation of the previously approved study which was ultimately not implemented in FY '85. Peace Corps will not use the subject inventory as a selection tool unless results from the proposed follow-up study warrant such a step.

ADDRESS: Intersted persons are invited to submit comments regarding this proposal by name to Francine Picoult, OMB Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Haag, Technical Adviser, Peace Corps, 806 Connecticut Avenue NW., Room P–400, Washington, DC 20526, telephone (202) 254–5650. This is not a toll-fee number. For a copy of the scale contact Dr. Haag.

SUPPLEMENTARY INFORMATION: Peace Corps proposes to incorporate a self-administered paper-and-pencil inventory to help staff improve the selection of Peace Corps Volunteers. Current research with the inventory, the Overseas Assessment Inventory (OAI), originally developed and validated to screen naval and private sector personnel for overseas assignments, and recently tested on a sample of Peace

Corps candidates suggests the tool is a cost effective and systematic means for measuring and predicting Peace Corps Volunteer candidates' cross-cultural adjustment overseas. Use of this inventory by the U.S. Navy, Peace Corps and others has not produced any evidence that it discriminates among groups on the basis of gender, race or ethnic background. Information derived from the inventory predicts the suitability of a Peace Corps Volunteer candidate as he or she goes through Peace Corps' Volunteer Delivery System and overseas service.

All persons who submit an application to serve as a Peace Corps Volunteer will fill out the inventory. It is estimated that 15,000+ people would be involved per annum. Respondents will be mailed and requested to complete a copy of the OAI, along with their application to serve.

Participants will need to provide personal identifying information in order that later status changes can be tracked and linked to OAI scores. The proposed information collection requirement is described below.

List of subjects: Volunteers, Information, Privacy

Proposal: Overseas Assessment Inventory, PC Form 1556

Office: Office of Volunteer Recruitment and Selection

Frequency of Submission: On occasion

Affected Public: Individuals who apply for Peace Corps Volunteer services.

Estimated Burden Hours: 7,500 per annum.

This is not a request to which 44 U.S.C. 350(h) applies.

This notice is issued in Washington, DC, on February 14, 1986.

Linda Rae Gregory,

Associate Director for Management.

[FR Doc. 86-3545 Filed 2-20-86; 8:45 am]

BILLING CODE 6051-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of an Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed extension of information collection, BRI 49-224, Certification of Full-Time School Attendance.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980, this notice announces a proposed extension of a form that collects information from the public. BRI 49-224, Certification of Full-Time School Attendance, is used by the Civil Service Retirement System, Office of Personnel Management, to survey survivor annuitants who have reached age 18 through 22 to determine if survivor benefits should be continued. Information received as a result of the survey may lead to the suspension of benefits to ineligible recipients as provided by section 8341(a)(4)(c), title 5, U.S. Code. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on 632-7714.

ADDRESSES: Send or deliver comments within 10 working days from the date of publication to:

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632-5472.

U.S. Office of Personnel Management.

Constance Horner,

Director.

[FR Doc. 86-3752 Filed 2-20-86; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1986, shall be at the rate of 22.5 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1986, 27.8 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 72.2 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 14, 1986.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-3746 Filed 2-20-86; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-22906; File No. SR-NSCC-86-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change

On January 30, 1986, the National Securities Clearing Corporation ("NSCC") filed with the Commission a proposed rule change under section 19 (b)(1) of the Securities Exchange Act of 1934 (the "Act"). The Commission is publishing this notice to solicit public comment on the proposal. The proposal modifies NSCC's municipal bond when-issued comparison system to process more effectively syndicate takedown transactions. The proposal provides for one-sided trade data input by the syndicate manager resulting in compared trades reported to the syndicate manager and syndicate members. Those compared trades will be reported on syndicate takedown when-issued contract sheets.

The proposal also enables syndicate members and the syndicate manager to delete a compared takedown trade by using a one-sided delete on the day the compared trade appears on the contract sheet or on the next business day. In the event of a syndicate buy-back, the syndicate manager can submit a sell-side withhold of the takedown trade, which results in a compared withhold trade reported on takedown contract sheets. For buy-backs, syndicate members' contracts will show automatically a purchase-withhold matching the sell-side withhold. Syndicate members will not be able to submit purchase-withholds for takedown trades.

The proposal further provides that compared takedown trades will result in syndicate-identified receive and deliver tickets for trade-for-trade settlement. The proposal provides that extended settlement and clearing-agent standing instructions cannot be used for takedown trades.

NSCC states in its filing that the proposal's special procedures will enable more efficient processing of syndicate takedown trades by distinguishing takedown trades from other transactions and by providing timely one-sided input by the syndicate manager. NSCC states that these procedures should reduce uncompared trades and trade input duplication. NSCC also states that the proposal is consistent with the Act and Section 17A of the Act because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

The rule change has become effective, pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4. The Commission may summarily abrogate the rule change at any time within 60 days of its filing if it appears to the Commission that abrogation is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

You can submit written comment within 21 days after notice is published in the Federal Register. Please file six copies of your comment with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, with accompanying exhibits, and all written comments, except for material that may be withheld from the public under 5 U.S.C. 552, are available at the Commission's Public Reference Room, 450 5th Street NW., Washington, DC. Copies of the filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–86–2 and should be submitted by March 14, 1986.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: February 13, 1986.

John Wheeler,

Secretary.

[FR Doc. 86–3844 Filed 2–20–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14938; File No. 811–4211]

Application and Opportunity for Hearing; American General Series Portfolio Co.

February 13, 1986.

Notice is hereby given that American General Series Portfolio Company ("Applicant"), 2929 Allen Parkway, Houston, Texas 77019, registered an open-end, diversified management company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N–8F on October 3, 1985, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that on January 28, 1982, it filed a Form N–8A Notification of Registration under the Act and a registration statement on Form N–1A pursuant to the Securities Act of 1933, to register an indefinite number of shares of its common stock. The application states that on September 13, 1985, the securityholders of the Applicant at their annual meeting approved a Plan and Articles of Merger. The application states that on September 25, 1985, the Applicant, a Maryland corporation, merged with and into VALIC Capital Accumulation Fund, Inc. and VALIC Timed Opportunity Fund, Inc. and under Maryland law, became the surviving entity and successor corporation after the merger. The Applicant succeeded to the registration statements of VALIC Timed Opportunity Fund, Inc.

Applicant states that it has no securityholders, no assets, no outstanding liabilities, and that it has not, within the last 18 months, transferred any of its assets to a separate trust. Applicant submits that pursuant to the merger, no distributions were made to securityholders, it is not a party to any litigation or administrative proceeding and that it is not engaged and does not propose to engage in any business activity except as may be necessary to wind up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3840 Filed 2–20–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14940; 812–6284]

MetLife-State Street Investment Trust and MetLife-State Street Tax-Exempt Trust; Application for an Order Permitting Assessment and Waiver of Contingent Deferred Sales Load

February 13, 1986.

Notice is hereby given that MetLife-State Street Investment Trust and MetLife-State Street Tax-Exempt Trust (the "Trusts" or "Applicants"), One Financial Center, Boston, Massachusetts 02111, filed an application on January 15, 1986, and an amendment thereto on January 30, 1986, for an order pursuant to section 6(C) of the Investment Company Act of 1940 (the "Act"), exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit the assessment (and waiver) of a contingent deferred sales load ("CDSL"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicants represent that they are open-end, diversified, management investment companies organized as Massachusetts business trusts. According to the application, MetLife-State Street Management Company, Inc. (the "Adviser") will serve as investment adviser for the Trusts, and MetLife-State Street Investment Service Company, Inc. (the "Distributor") will serve as distributor and principal underwriter of each Trust's shares and will receive the proceeds from the CDSL.

Applicants state that the Trusts are each presently comprised of two portfolio series. Applicants further state that both Trusts may from time to time offer one or more new series to the public. Applicants therefore request that the requested exemptive relief extend to any additional series which may be offered by either Trust subject to a CDSL assessed on substantially the same basis as the CDSL described in the application. With respect to the prospective relief requested on behalf of any such additional series Applicants undertake to utilize such relief pursuant

to the terms and conditions set forth in the application.

Applicants state that an initial sales load of up to 2% generally will be imposed upon purchases of shares of either Trust. Moreover, each Trust has adopted a distribution plan pursuant to Rule 12b–1 under the Act which provides for monthly payments to the Distributor at the annual rate of 0.5% of the average daily value of its assets. In addition, Applicants represent that certain redemptions of shares during the first four years following the purchase of such shares, generally will be subject to a CDSL.

Applicants state that when a CDSL is imposed upon redemptions, the amount of such charge will be 2.5% of the net asset value of the shares redeemed if the redemption occurs during the first twelve-month period following the date upon which the shares being redeemed were purchased; 2% if the redemption occurs during the next twelve-month period; 1.5% if the redemption occurs during the third twelve-month period, and 1.0% if the redemption occurs during the fourth twelve-month period. If the redemption occurs during the fifth or any subsequent year following the date of purchase, no CDSL will be imposed. According to the application, for ease of administration, in calculating the CDSL all purchases of shares will be deemed to have been made on the last day of the month in which the purchase was made. Moreover, Applicants reserve the right to change the initial sales load and/or the CDSL provided that the aggregate of both sales charges does not exceed applicable limitations imposed by the National Association of Securities Dealers, Inc.

Applicants represent that no CDSL will be imposed on redemptions of (a) shares redeemed as a result of exercising an exchange privilege, (b) shares acquired through reinvestment of dividends or distributions, and (c) that number of shares having a value equivalent to the net appreciation of shares purchased by the redeeming shareholder within the prior four years. Applicants represent that in effecting any redemption, those shares held longest are assumed the first to be redeemed and that shares received by virtue of exercising an exchange privilege or upon a transfer (including any transfer to a securities dealer in connection with a repurchase) will be deemed to have been held for as long as the shares exchanged or transferred.

Applicants represent that no initial sales charge or CDSL will be imposed in connection with the sale of shares to, and the redemption of shares by, officers, directors, trustees, employees and sales representatives of the Trusts, the Adviser, the Distributor, State Street Research & Management Company (the parent company of the Adviser), or any spouse or minor child of the foregoing, provided that each purchaser has submitted to the applicable Trust at the time of purchase a written assurance that the purchase is being made for investment purposes and that the shares purchased will not be resold except through redemption.

Applicants contend that the proposed CDSL is consistent with all provisions of the Act and that it is fair and in the best interests of the Trusts' shareholders. Applicants believe that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate the Distributor for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicants assert that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicants represent that the proposed waivers of the CDSL will be fully disclosed in the applicable prospectus, that there will be no discrimination among the members of each class who would benefit from the waivers, and that existing shareholders will be advised of any future variations of the CDSL within one year of the date such variation is made available to purchasers of the Trusts' shares.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued the Commission orders a hearing upon request or unless upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3841 Filed 2–20 86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14937; File No. 812–6244]

Application and Opportunity for Hearing; Monarch Life Insurance Co. et al.

February 13, 1986.

Notice is hereby given that Monarch Life Insurance Company ("Monarch"), 1250 State Street, Springfield, Massachusetts 01133, Variable Account A of Monarch ("Variable Account A") and Variable Account B of Monarch ("Variable Account B") (collectively known as "Applicants"), filed an application on November 6, 1985, and an amendment thereto on January 10, 1986, for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), amending certain prior orders that granted exemptions from sections 12(d)(1), 26(a)(2) and 27(c)(2) of the Act and granting exemptive relief from subsections (a)(2) and (b)(15) of Rule 6e–2 in connection with certain flexible premium variable life insurance contracts ("Flexible Contracts") issued through Variable Accounts A and B and future separate accounts of Monarch (together, "Accounts"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and are referred to the Act and rules thereunder for a statement of the relevant provisions.

Applicants state that Monarch is a stock life insurance company organized under the laws of the Commonwealth of Massachusetts. Applicants assert that Monarch currently issues various annual and single premium variable life insurance contracts ("VLI Contracts") through two separate accounts, Variable Account A and Variable Account B. Applicants state that in the future, other separate accounts may be established to provide basic funding to support the benefits under Monarch's VLI Contracts and Flexible Contracts.

Applicants state that the Variable Accounts A and B are each registered as a unit investment trust under the Act. Applicants state that each consists of several investment divisions, and all assets held in the designated account's investment divisions currently are used to purchase shares or units issued by registered investment companies organized either as open-end management investment companies or unit investment trusts.

Applicants state that the Flexible Contracts, like the VLI Contracts, will be designed to provide insurance coverage on the life of the insured.

Applicants assert that the death benefit and cash values under a particular Flexible Contract, will vary based upon the investment performance of the chosen investment divisions of the Account funding the contract.

Applicants state that unlike the VLI Contracts, the Flexible Contracts will not necessarily provide guaranteed lifetime insurance coverage; however, so long as the contract remains in force the death benefit will be the greater of the current face amount and the variable insurance amount. Applicants state that another difference is that the VLI Contract did not permit partial withdrawals and, therefore, no charge was made for such transactions; the Flexible Contracts do permit such transactions and levy a change therefor.

Applicants state that the Flexible Contract will continue in force and pay death benefit proceeds, which at a minimum equal the current face amount of the contract, regardless of whether there is sufficient cash value to pay the charges under the contract, for a specified Guarantee Period (unless the contract debt becomes excessive). Applicants state that the length of the Guarantee Period is determined by the relationship between the net premiums paid and the face amount of the contract. Applicants state that as the current Flexible Contract requires only a single premium payment, the length of the Guarantee Period will originally be determined by the relationship between the initial net premium and the face amount. Applicants state that the owner may select the face amount within certain limitations. Applicants state that the minimum face amount for a given premium will be the amount that will produce a Guarantee Period for the insured's entire life, while the maximum face amount for a given premium will be the amount that will produce a Guarantee Period of at least 10 years. Applicants note that the Guarantee Period will be determined based upon the initial net premium and face amount, using the guaranteed maxium mortality rates in the contracts, and a 4% interest assumption. Applicants note that after the initial premium is paid, the Guarantee Period may be adjusted upon the payment of additional premiums or by partial withdrawals of cash value.

Applicants state that other versions of Flexible Contract may be created in the future which provide for different structures for premium payments or certain other characteristics. Applicants state that in such cases, the operation of the Guarantee Period may differ.

Applicants represent that in other respects the Flexible Contracts will operate in much the same fashion as the VLI Contracts. The application states that contractowners will be permitted to allocate their investment base among the various investment divisions which invest in the underlying vehicles, including both mutual funds and the Trusts. The application states the contract loading, which consists of sales load (which is a maximum of 4.0% of premiums paid), a first year administrative expense and state and local premium tax charges, will be deducted from the premium, but advanced by Monarch and included in the policyowner's investment base. Applicants represent that the contract loading will then be deducted in equal installments on the next ten contract anniversaries. Applicants state that in addition, mortality costs will be assessed to compensate Monarch for the cost of providing life insurance coverage on the insured. Applicants note the mortality costs, which are based upon the Commission's 1980 Standard Mortality Tables (and may be based on a multiple thereof for substantial risks), are deducted from the investment base quarterly on the policy processing dates. The application states that other charges deducted from the contract include an asset charge to cover the mortality, expense and guaranteed benefit risks computed at a maximum effective annual rate of .60% of assets at the beginning of the year and a charge against the assets of each division investing in the Trusts, currently at an effective annual rate of .25% at the beginning of the year (which can be increased to no more than .50%), which compensates Monarch for its costs in acquiring units of the Trusts for those divisions. The application states these charges are deducted on a daily basis in determining a contract's net rate of return.

Relief Requested

Applicants state that in connection with the VLI Contracts issued by Variable Account A and Variable Account B, Monarch and those accounts sought and obtained certain exemptive relief. An order was issued regarding Variable Account A on May 1, 1984 (Release No. IC–13914) (File No. 812–5724) and Variable Account B on April 9, 1985 (Release No. IC–14460) (File No. 812–6026) ("prior orders"). Applicants assert that the exemption granted were necessitated primarily as a result of those Accounts' investments in other investment companies that were organized as unit investment trusts ("Trusts"). Applicants note that the Trusts provide a "zero coupon" investment vehicle for the VLI Contracts. The specific exemptive relief granted under the prior orders included relief from section 12(d)(1) of the Act, to the extent necessary to permit the purchase of shares of the Trusts, and from sections 26(a)(2) and 27(c)(2) to permit Monarch to recover amounts, through asset charges against the Variable Accounts A and B, paid by Monarch to the Trust sponsors in connection with the acquisition of Trust units. Applicants incorporate by reference the applications requesting such relief.

Applicants submit that there may be a question whether the relief granted in the prior orders would extend to the Flexible Contracts, given the differences in policy design and in the exemptive rules under which the Flexible and VLI Contracts are regulated. Applicants also are concerned that using the same separate accounts to support both the VLI Contracts and Flexible Contracts may bring into question the continued qualification of the VLI Contracts under Rule 6e–2. Applicants are therefore seeking an order amending the prior orders to (a) provide exemptive relief from paragraph (a)(2) and (b)(15) of Rule 6e–2 to permit both the VLI Contracts and Flexible Contracts to be issued through the same separate account and (b) extend, to the extent necessary, the prior exemptive relief granted from sections 12(d)(1), 26(a)(2) and 27(c)(2), pursuant to section 6(c) under the Act, to Flexible Contracts issued by any Account.

Applicants note that paragraph (a)(2) of Rule 6e–2 prescribes that, except for certain advances made by the life insurance company, the assets of the separate account must be derived solely from the sale of variable life contracts as defined in Rule 6e–2. Applicants state that since the Commission has adopted a second rule, Rule 6e–3(T), which defines a second type of variable life contract, it could be argued that a contract falling within the definition in paragraph (c)(1) of Rule 6e–3(T) would not be a "contract as defined in Rule 6e–2." Applicants believe that the Flexible Contracts currently being registered should be treated as flexible premium variable life contracts under Rule 6e–3(T). Thus, an issue is raised whether, upon the sale of the Flexible Contracts, the assets of the Accounts would be derived solely from the specified type of contract so as to permit the VLI Contracts to continue to be issued in reliance on the relief granted by Rule 6e–2.

Applicants submit that there is no reason why one separate account should be prohibited from issuing contracts qualifying under both Rule 6e–2 and

Rule 6e–3(T). Applicants assert that no apparent conflicts of interest would arise as a result of one contract having scheduled premiums and another allowing flexible premiums. Applicants state that in adopting 6e–3(T), the Commission placed no such restriction on the separate account. In addition, Applicants note, the Commission has proposed an amendment to Rule 6e–2 to permit the use of the same account for both types of contracts. (Release IC–14421, March 15, 1985.)

With regard to the extension of the prior orders to the Flexible Contracts, Applicants assert that although there are differences between the Flexible Contracts and the VLI Contracts, none of the differences have a bearing on the appropriateness of the relief granted in the prior orders. Applicants represent that the basic investment structure of the Flexible Contracts is the same as for the VLI Contracts. Applicants state that the same basic types of charges or deductions are made under the Flexible Contracts and the VLI Contracts. Applicants assert that the arguments made in the applications for the prior orders are equally applicable in the case of the Flexible Contracts, and are incorporated by reference. Moreover, Applicants represent that the Accounts and the Flexible Contracts will be subject to the same representations and limitations as discussed in the prior applications.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3843 filed 2–20–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–14939; File No. 811–3507]

Application and Opportunity for Hearing: VALIC Capital Accumulation Fund, Inc.

February 13, 1986.

Notice is hereby given that VALIC Capital Accumulation Fund, Inc. ("Applicant"), 2929 Allen Parkway, Houston, Texas 77019, registered as an open-end, diversified management company under the Investment Company Act of 1940 (the "Act"), filed an application on Form N–8F on October 3, 1985, pursuant to section 8(f) of the Act, for an order declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The Applicant states that on June 30, 1982, it filed a Form N–8A Notification of Registration under the Act and filed a registration statement on Form N–1 pursuant to the Securities Act of 1933, to register an indefinite number of shares of its common stock. The application states that on September 10, 1985, the security-holders of the Applicant at their annual meeting approved a Plan and Articles of Merger. The application states that on September 26, 1985, the Applicant, formerly a Maryland corporation, merged with and into American General Series Portfolio Company and under Maryland law, ceased its independent existence.

Applicant states that it has no securityholders, no assets, no outstanding liabilities, and that it has not, within the last 18 months, transferred any of its assets to a separate trust. Applicant submits that pursuant to the merger no distributions were made to securityholders, it is not a party to any litigation or administrative proceeding and that it is not engaged and does not propose to engage in any business activity except as may be necessary to wind up its affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for such request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86–3842 Filed 2–20–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Automotive Fuel Economy Program; Report to the Congress

The attached document, *Automotive Fuel Economy Program, Tenth Annual Report to the Congress*, has been prepared pursuant to section 502(a)(2) of the Motor Vehicle Information and Cost Savings Act (Pub. L. 92–513), as amended by the Energy Policy and Conservation Act (Pub. L. 94–163) which requires in pertinent part that "each year beginning 1977, the Secretary shall transmit to each House of Congress, and publish in the **Federal Register**, a review of average fuel economy standards under this part."

Barry Felrice,

Associate Administrator For Rulemaking.

Automotive Fuel Economy Program

Tenth Annual Report to the Congress

January 1986

Table of Contents

Section I: Introduction

This Tenth Annual Report to the Congress summarizes the activities of the National Highway Traffic Safety Administration (NHTSA) during 1985 regarding the implementation of applicable sections of Title V: "Improving Automotive Fuel Efficiency," of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*), as amended (the Act). Section 502(a)(2) of the Act requires submission of a report by January 15th of each year. Included in this report are sections summarizing rulemaking activities

during 1985 and a discussion of the use of advanced automotive technology by the industry as required by section 305, Title III of the Department of Energy Act of 1978 (Pub. L. 95–238).

Title V of the Act requires the Secretary of Transportation to administer a program for regulating the fuel economy of new passenger cars and light trucks in the United States (U.S.) market. The authority to administer the program has been delegated by the Secretary to the Administrator of NHTSA, 49 CFR 1.50(f).

NHTSA's responsibilities in the fuel economy area include: (1) Establishing and amending average fuel economy standards for manufacturers of passenger automobiles and light trucks as necessary; (2) promulgating regulations concerning procedures, definitions, and reports necessary to support the fuel economy standards; (3) considering petitions for exemption from established fuel economy standards by low volume manufacturers (those producing fewer than 10,000 passenger cars annually worldwide) and establishing alternative standards for them; (4) preparing reports to Congress annually on the progress of the fuel economy program, (5) enforcing the fuel economy standards and regulations; and (6) responding to petitions concerning domestic production by foreign manufacturers and other matters.

To date, passenger car fuel economy standards have been established by the Congress for model years (MY's) 1978 through 1980 and for 1985 and thereafter, and by NHTSA for the 1981 through 1984 model years. In addition, during 1985 NHTSA amended the MY 1986 passenger car standard. Standards for light trucks have been established by NHTSA for MY's 1979 through 1987. All current standards are listed in Table I–1.

TABLE I–1.—FUEL ECONOMY STANDARDS FOR PASSENGER CARS AND LIGHT TRUCKS FOR THE 1978 THROUGH 1987 MODEL YEARS (IN MPG)

	Passenger cars	Light trucks [1]		
		Two-wheel drive	Four-wheel drive	Composite [2]
1978	[3] 18.0			
1979 [4]	[3] 19.0	17.2	15.8	17.2
1980 [5]	[3] 20.0	16.0	14.0	
1981 [5]	22.0	16.7	15.0	
1982	24.0	18.0	16.0	17.5
1983	26.0	19.5	17.5	19.0
1984	27.0	20.3	18.5	20.0
1985	[3] 27.5	19.7	18.9	19.5
1986	[7] 26.0	20.5	19.5	20.0
1987	[3], [6] 27.5	21.0	19.5	20.5

[1] Standards for 1979 model year light trucks were established for vehicles with a gross vehicle weight rating (GVWR) of 6,000 lbs. or less. Standards for MY's 1980 through 1987 are for light trucks with a GVWR of up to and including 8,500 lbs.

[2] For model years 1982–1987, manufacturers may comply with the two-wheel and four-wheel drive standards or may combine their two-wheel and four-wheel drive light trucks and comply with the composite standard.

[3] Established by Congress in Title V of the Motor Vehicle Information and Cost Savings Act.

[4] For MY 1979, light truck manufacturers may comply separately with standards for four-wheel drive, general utility vehicles and all other light trucks, or combine their trucks into a single fleet and comply with the 17.2 mpg standard.

[5] Light trucks manufactured by a manufacturer whose fleet is powered exclusively by basic engines which are not also used in passenger automobiles, must meet standards of 14 mpg and 14.5 mpg in model years 1980 and 1981, respectively.

[6] For MY 1987 and thereafter.

[7] Title V established a standard of 27.5 mpg for 1985 and subsequent model years, but provided the Department of Transportation with the authority to amend the standard. In October 1985, NHTSA published a final rule changing the MY 1986 standard to 26.0 mpg.

Section II: Fuel Economy Improvement by Manufacturers

The fuel economy achievements of both domestic and foreign manufacturers in MY 1984 have been updated since their publication in the *Ninth Annual Report to the Congress* and, together with current data for MY 1985, are listed in Tables II–1 and II–2. Although there was some fuel economy improvement over MY 1984, lower fuel prices continued to stimulate consumer demand for larger cars and larger engines in MY 1985. These lower prices also contributed to reduced demand for diesel engines. Consequently, MY 1985 Corporate Average Fuel Economy (CAFE) values increased over MY 1984 levels for only 5 of the 26 passenger car manufacturers listed in Table II–1. However, these 5 companies account for about 74 percent of total MY 1985 production. Manufacturers did continue to introduce new technologies and more fuel-efficient models. In general, the domestic companies improved their passenger car CAFE levels, while imported car CAFE levels declined. MY 1985 is the second consecutive year in which imported car CAFE levels declined and domestic car CAFE levels increased.

For light trucks, the average MY 1985 CAFE for manufacturers using the two-wheel drive standard for compliance declined 0.2 miles per gallon from MY 1984 levels, and the average CAFE for manufacturers using the four-wheel-drive standard increased by 0.3 mpg. CAFE levels for two- and four-wheel drive domestic and four-wheel drive imported light truck manufacturers generally increased, but the overall fleet fuel economy level changed very little because the import share of total production declined.

TABLE II–1.—PASSENGER CAR FUEL ECONOMY PERFORMANCE BY MANUFACTURER AND MODEL YEAR [1]

Manufacturer	Model year—CAFE [2] (MPG)	
	1984	1985
Domestic		
AM	35.5	33.5
Chrysler	27.8	27.9
Ford	25.8	26.3
GM	24.9	25.5
Sales weighted average	25.6	26.1
Imported		
Alfa Romeo	26.6	27.3
Bertone	29.8	29.2
BMW	26.0	25.8
Chrysler Imports	36.4	35.5
Ford Imports	35.6	24.9
GM Imports		47.7
Honda	35.2	33.9
Isuzu	29.2	27.7
Jaguar	19.4	19.2
Mazda	30.6	29.6
Mercedes Benz	26.2	23.0
Mitsubishi	31.6	31.4
Nissan	31.6	29.4
NUMMI (GM-Toyota)		35.7
Peugeot	25.0	24.7
Pininfarina	29.0	27.9
Porsche		25.5
Renault	33.2	28.6
Saab	26.0	25.8
Subaru	33.3	33.0
Suzuki		57.5
Toyota	33.5	32.9
Volvo	27.0	26.5
VW [3]	29.1	30.2
Sales Weighted Average	31.5	30.8
Total Fleet Average	26.8	27.3
Fuel Economy Standards	27.0	27.5

[1] Manufacturers of fewer than 10,000 passenger cars annually are not listed.

[2] Corporate Average Fuel Economy.

[3] Includes VW domestic production as well as VW, Audi, and Porsche imports for MY 1984. For MY 1985, Porsche is considered a separate manufacturer.

NOTE.—Many MY 1984 CAFE values differ from those used in the Ninth Annual Report to the Congress due to the inclusion of EPA test procedure adjustment credits in the current data.

TABLE II-2.—LIGHT TRUCK FUEL ECONOMY PERFORMANCE BY MANUFACTURER AND MODEL YEAR

Manufacturer	Model year cafe (MPG)					
	Two-wheel drive		Four-wheel drive		Composite [1]	
	1984	1985	1984	1985	1984	1985
DOMESTIC						
AM		23.5	20.5	20.3		
Chrysler					18.4	19.0
Ford	19.0	19.6	18.3	18.7		
GM	19.9	20.1	19.9	20.1		
Sales weighted average	19.5	19.9	19.3	19.7	18.4	19.0
IMPORTED						
Chrysler Imports	27.9		25.2			27.8
Ford Imports	29.6	26.0				
Isuzu	33.0	33.5	24.7	24.9		
Mazda	29.7	(2)				
Mitsubishi	28.3	28.7	23.2	24.8		
Nissan	27.9	26.7	22.7	22.9		
Subaru			28.6	28.1		
Suzuki			28.8	28.8		
Toyota	26.2	27.8	22.6	23.9		
VW	20.7	21.3				
Sales weighted average	27.7	27.4	24.4	24.8		27.8
Total fleet average	21.3	21.1	20.2	20.5	18.4	19.4
Fuel economy standards	20.3	19.7	18.5	18.9	20.0	19.5

[1] In model years 1984 and 1985, manufacturers could comply with the two-wheel and four-wheel drive standards or could combine their two-wheel and four-wheel drive trucks and comply with the composite standards.
[2] Early introduction of 1986 models, no 1985 models produced.

Because of continued consumer demand for larger vehicle and engines, a number of passenger car and light truck manufacturers did not achieve the levels of the CAFE standards for MY 1985. However, NHTSA is not yet able to determine which of these manufacturers may be liable for civil penalties for noncompliance. Some of the MY 1985 CAFE projections will change by the time final MY 1985 CAFE figures are provided to NHTSA in the spring and summer of 1986. For example, many of the current MY 1985 CAFE estimates do not include Environmental Protection Agency (EPA) test procedure adjustment credits. These credits are granted to compensate for the effects of past test procedure changes (see the EPA final rule, July 1, 1985, 50 FR 27172) and differ among the manufacturers. Thus, the precise level for each manufacturer is not known at this time. Adding these credits would increase CAFE values. In addition, many manufacturers are not expected to pay civil penalties because in earlier years they earned sufficient credits by exceeding fuel economy standards to offset later shortfalls. Other manufacturers will file carryback plans to demonstrate they anticipate earning credits in future model years to eliminate current deficits.

The total fleet average fuel economy for the MY 1985 passenger car fleet falls short of the standard by 0.2 mpg, but this shortfall may be reduced once final CAFE values are determined for each manufacturer. Total fleet average fuel economy values of light trucks exceeded the separate two- and four-wheel drive MY 1985 standards. NHTSA estimates that by 1995 the projected cumulative passenger car and light truck fuel savings, due to manufacturers' achievements through 1985 and assuming they meet and continue to achieve the fuel economy levels of existing standards for the post-1985 period, would amount to approximately 420 billion gallons, compared to consumption projected at MY 1976 new vehicle fuel economy levels. This calculation is based on the assumption that on-road fuel economy average 15 percent below EPA ratings. This adjustment is consistent with current EPA labeling requirements.

The characteristics of the MY 1985 passenger car fleet reflect a slight trend toward larger, higher performance cars in both the import and the domestic fleets (see Table II-3). The domestic fleet average curb weight increased by 9 pounds over MY 1984, as did the import fleet. However, the total MY 1985 fleet average curb weight decreased by 12 pounds because of the larger share taken by imports, which have a lower fleet average curb weight than the domestics. The average engine displacement increased by 2 cubic inches for the domestic fleet and did not change on the import fleet. Performance as measured by fleet average engine horsepower to curb weight increased by 0.14 horsepower per 100 pounds in the domestic fleet and 0.24 horsepower per 100 pounds in the import fleet. The size of domestic automobiles increased as the market shares of mid- and full-size cars increased at the expense of smaller size classes. Similarly, the shares of mid-size and compact cars in the import fleet increased while the subcompact share of the import fleet declined.

CAFE for the total new passenger car fleet increased by 0.5 mpg in MY 1985, consisting of an improvement in the domestic fleet and a decline in the imported fleet CAFE. The domestic fleet improvement is particularly notable since average curb weight increased slightly, performance levels increased, and fuel efficient diesel engines have virtually disappeared from the MY 1985 fleet. Some of the factors accounting for this improvement are increased use of front-wheel drive (reducing driveline losses by replacing inefficient hypoid gears with spiral bevel or helical gears), engine friction reduction techniques (such as the use of reduced piston ring tension and roller camshift followers) increased use of fuel injection (up from 39 percent in MY 1984 to 58 percent in MY 1985), and refinement of engine calibrations.

In the import fleet, the decline in CAFE is due to a shift toward larger vehicles, increased performance levels and decline in diesel engine sales, which more than offset the increased use of front-wheel drive, lock-up clutches on automatic transmission torque converters, and fuel injection.

TABLE II-3.—PASSENGER CAR FLEET CHARACTERISTICS

	Total Fleet MY 1984	Fleet 1985	Domestic Fleet 1984	Fleet 1985	Import Fleet 1984	Fleet 1985
Fleet average fuel economy, mpg	26.8	27.3	25.6	26.1	31.5	30.8
Fleet average curb weight, pounds	2878	2866	3009	3018	2448	2457
Fleet average engine displacement, inches [2]	178	177	197	199	119	119
Fleet average horsepower/weight ratio, HP/100 pounds	3.66	3.84	3.63	3.77	3.77	4.01
Percent of fleet	100	100	75.8	72.8	24.2	27.2
Segmentation by EPA size class, percent:						
Two-seater	3.2	3.3	2.5	1.7	5.4	7.6
Minicompact	0.3	0.6	0.0	0.0	1.4	2.3
Subcompact [1]	25.9	21.1	12.4	9.8	69.8	51.3
Compact [1]	27.9	31.0	30.2	29.6	20.5	34.9
Mid-size [1]	29.2	28.6	37.2	37.7	2.9	3.8
Full size [1]	13.5	15.4	17.6	21.2	0.0	0.0
Percent diesel engines	1.7	0.9	0.9	0.2	4.3	2.7
Percent turbocharged engines	2.7	3.7	2.0	3.0	5.3	5.6
Percent fuel injection	41.0	56.4	39.1	57.5	47.4	53.3
Percent front-wheel drive	54.7	63.3	51.5	60.0	65.3	72.3
Percent automatic transmissions	76.1	76.9	86.2	88.6	43.2	45.4
Percent of automatic transmissions with lock-up clutches or split torque	81.9	82.3	87.7	86.1	55.3	62.5

[1] Includes associated station wagons.

Section III: 1985 Activities

A. MY 1986 Passenger Car Fuel Economy Standard

On March 1, 1985, General Motors Corporation (GM) and Ford Motor Company (Ford) petitioned the agency to reduce passenger car fuel economy standards for 1986 and subsequent model years from 27.5 mpg to 26.0 mpg. In general, both companies argued that changes in the passenger car market beyond their control, such as declining fuel prices and increased import competition, had reduced their fuel economy capability.

On March 28, 1985, NHTSA published a notice in the **Federal Register** (50 FR 12344) granting the petitions, and requested public comment on the petitions. In that notice, NHTSA combined rulemaking on these petitions with that of a petition submitted earlier by the Center for Auto Safety (CFAS) and the Environmental Policy Institute (EPI). The CFAS/EPI petition, submitted to the agency in a letter dated July 26, 1984, requested that the agency raise the existing passenger car fuel economy standard for model years 1987–90. Those two organizations requested that the existing 27.5 mpg standard for those years be increased to 31.5, 34.5, 37.5, and 40.5 mpg respectively. The CFAS/EPI petition was granted by NHTSA in a **Federal Register** notice on November 28, 1984 (49 FR 46770). In both **Federal Register** notices, the agency noted that the granting of a petition does not mean that a rule will necessarily be issued. The determination of whether to issue a rule is made in the course of rulemaking, in accordance with statutory criteria.

In the March 28, 1985, grant notice, NHTSA stated it was focusing its attention on MY 1986, due to the possibility of serious economic harm cited by GM and Ford, as well as the limited remaining time for amending the MY 1986 standard. Amendments reducing a standard for a particular model year may be made until the beginning of that model year, but not after that time.

On July 22, 1985, after considering comments submitted in response to the March 1985 notice, NHTSA published in the **Federal Register** (50 FR 22912) a notice of proposed rulemaking (NPRM) to amend the MY 1986 standard by reducing it to 26.0 mpg. The NPRM outlined the agency's tentative conclusions that the maximum average fuel economy level for MY 1986 was 26.0 mpg. NHTSA concluded that GM and Ford, together constituting a substantial part of the industry, had made significant efforts to meet the 27.5 mpg standard, but that these efforts had been overtaken by unforseen events. The agency also concluded that the only actions available to GM and Ford to significantly raise their MY 1986 fuel economy levels would involve product restrictions resulting in adverse economic impacts, including sales losses well into the hundreds of thousands, job losses into the tens of thousands, and unreasonable restrictions on consumer choice. The agency requested public comment on its tentative conclusions, and scheduled a public meeting for August 8, 1985 to receive oral comments.

On September 30, 1985, after receiving extensive comments on its proposal and holding the public meeting, NHTSA issued a final rule amending the MY 1986 standard to 26.0 mpg (published in the **Federal Register** on October 4, 1985 (50 FR 40528)). The agency's analysis for the final rule was similar to the analysis used to support the NPRM. The agency noted that both GM and Ford projected they could achieve 26.3 mpg in MY 1986, but these estimates are subject to a number of risks. One risk is the likelihood of increased competition in the small car segment of the market, with the liberalization of Japanese auto export restraints and the introduction of new low-cost, foreign competition from Yugoslavia, Korea, and Greece. To the extent that this increased competition in the small car market results in fewer small car sales for GM and Ford, their MY 1986 CAFE levels would be reduced. Another risk is that fuel prices may decline further, reducing demand for smaller cars and engines, with concomitant increases in consumer demand for larger cars and engines. The inability of the Organization of Petroleum Exporting Countries to agree upon pricing and production levels has led to some estimates that petroleum prices may decline by 30 percent or more between Fall 1985 and Spring 1986. As the agency's experience with uncertainties that could reduce manufacturers' CAFE levels has indicated that there is a substantial risk that such uncertainties will come to fruition, NHTSA concluded that the maximum feasible standard for MY 1986 of 26.0 mpg.

B. Post-1986 Passenger Car Fuel Economy Standards

As noted above, the agency was petitioned by GM and Ford to reduce passenger car fuel economy standards for 1986 and subsequent model years, which the Center for Auto Safety and the Environmental Policy Institute petitioned NHTSA to raise standards for MY 1987–90. During 1985, however, NHTSA concentrated its rulemaking on MY 1986, due to the possibility of serious economic harm cited by GM and Ford, as well as the limited remaining time for amending the MY 1986 standard. In the final rule amending the MY 1986 standard, the agency noted it

was in the process of analyzing data for MY 1987 and subsequent years. On January 16, 1986, NHTSA issued an NPRM proposing a range of average fuel economy standards for model years 1987–1988.

C. Light Truck Standards

NHTSA published a final rule establishing MY 1987 light truck fuel economy standards on October 3, 1985 (50 FR 40398). The agency set a composite standard of 20.5 mpg, with optional standards of 21.0 mpg for two-wheel drive trucks and 19.5 mpg for four-wheel drive trucks.

Proposed standards for model years 1986 and 1987 light trucks had been published on March 6, 1984 (49 FR 8637). That rule proposed that final composite standards be set within the range of 20.0 mpg to 21.5 mpg for MY 1986 and 20.0 to 22.5 mpg for MY 1987. A final rule for MY 1986 trucks (and also amending the MY 1985 light truck standards) was published on October 22, 1984 (49 FR 41250). Among other things, that rule established a MY 1986 composite light truck standard of 20.0 mpg.

In the final rule for MY 1987 trucks, the agency determined that Ford was the "least capable" manufacturer with regard to improving the average fuel efficiency of its light trucks. The agency projected that Ford could achieve an average MY 1987 fuel economy level of 20.3–21.0 mpg. In contrast, NHTSA concluded that GM could achieve 21.1–22.4 mpg and Chrysler could achieve 21.6 mpg. The 21.0 mpg figure for Ford was subject to a potential loss of 0.4 mpg due to sales shifts towards larger engines and vehicles (primarily due to possible decline in fuel prices and consequent increased consumer demand for larger trucks and engines), as well as a potential loss of 0.3 mpg due to technological risks. The agency selected 20.5 mpg as the final composite standard because it balanced the potentially serious adverse economic consequences associated with market and technological risks against Ford's opportunities to further increase its fuel economy levels. Since Ford produces more than 30 percent of all light trucks subject to fuel economy standards, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of standards. In the final rule, the agency estimated that the 1987 light truck fleet will consume 520 million fewer gallons of gasoline over its lifetime that it would have consumed if light truck fuel economy levels were to remain at the levels of the 1986 standards.

A notice of proposed rulemaking establishing light truck standards for MY's 1988–1989 was issued on January 21, 1986.

D. Low Volume Petitions

Section 502(c) of the Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable passenger car fuel economy standards if these standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures fewer than 10,000 passenger automobiles, worldwide, in the model year for which the exemption is sought (the affected model year) and which manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year.

During 1985, the agency issued three **Federal Register** notices regarding low volume fuel economy standards. On February 8, 1985, NHTSA published a proposal (50 FR 5405) to grant Rolls-Royce an alternative fuel economy standard of 11.0 mpg for MY 1986, in response to a petition from Rolls-Royce. The agency tentatively concluded that it would not be technologically feasible and economically practicable for Rolls-Royce to improve the fuel economy of its 1986 cars above an average of 11.0 mpg, that compliance with other Federal automobile standards would not adversely affect achievable fuel economy, and that the national effort to conserve energy would not be substantially affected by granting the requested exemption and establishing the alternative standard. Public comment was requested on the agency's proposal.

On August 12, 1985, NHTSA published a final rule in the **Federal Register** (50 FR 32424) granting the Rolls-Royce exemption for MY 1986, and establishing an alternative standard of 11.0 mpg. The agency's rationale for the final rule was unchanged from the proposal; NHTSA had received no comments on the proposed decision.

On June 5, 1985, NHTSA published a proposal (50 FR 23738) to grant Rolls-Royce alternative fuel economy standards for model years 1987 through 1989. As in the case of the MY 1986 notice, this proposal was issued in response to a petition from Rolls-Royce. The agency proposed a standard of 11.2 mpg for all three model years. The rationale for the proposal was similar to that used for the proposed MY 1986 Rolls-Royce alternative standard. The 0.2 mpg increase in fuel economy over the MY 1986 level was projected to be due primarily to the use of a lower rear axle ratio in MY 1987–89 Rolls-Royce cars. A final rule on this issue is expected to be issued shortly.

The agency is also evaluating four other petitions from low volume manufacturers; Lamborghini, Lotus, Maserati, and LondonCoach. Action on these petitions is anticipated early in 1986.

E. Civil Penalties

During 1985, NHTAS assessed civil penalties of $6,015,990 against Jaguar Cars, Inc. for failing to meet MY 1983 and 1984 passenger car fuel economy standards. This marks the first time an automobile manufacturer has been assessed penalties for not achieving fuel economy standards. Jaguar's MY 1983 CAFE was 19.2 mpg, versus a standard of 26.0 mpg. Jaguar's MY 1984 CAFE was 19.4 mpg, while the standard was 27.0 mpg.

In model year 1983, Jaguar imported 12,639 cars. The company's penalty for that year would have been $4,297,260. However, Jaguar had $4,239,290 in carryforward credits, reducing the MY 1983 penalty to $57,970. Jaguar imported 15,679 cars in MY 1984, which resulted in a $5,958,020 penalty. The company was assessed the full amount for MY 1984 because no credits were available to offset the shortfall.

Section IV: Impact of Domestic Content Amendment

The Automobile Fuel Efficiency Act of 1980 (Act of 1980) modified several provisions of the Motor Vehicle Information and Cost Savings Act. One of these modifications concerned the domestic content provision in section 503 of Title V. Section 503 specifies that passenger cars having less than 75 percent of the cost to the manufacturer attributable to value added in the United States or Canada are considered to be foreign manufactured. Conversely, vehicles with at least 75 percent value added in the U.S. or Canada are considered to be domestically manufactured for the purposes of complying with fuel economy regulations. Since section 503 also requires that domestically and foreign produced passenger automobiles not be grouped together for the purpose of complying with fuel economy standards, highly fuel-efficient vehicles with less than 75 percent value added in the United States or Canada may not be used by a manufacturer to offset the lower fuel economy of its domestically produced cars.

The domestic content provision was included in Title V to promote employment in the U.S. automobile industry by encouraging manufacturers to produce high fuel economy vehicles in this country, instead of relying on the importation of such cars which they produce or purchase abroad. However, foreign manufacturers choosing to build their most fuel-efficient vehicles in the U.S. or Canada, with at least 75 percent domestic content, would not, under the original domestic content provision, be permitted to average such cars with their less fuel-efficient foreign-produced models. Thus, there existed a disincentive for foreign manufacturers to initiate U.S. production and to achieve high levels of domestic content. The Act of 1980 permits manufacturers completing their first year of production in the period 1975–85 to petition NHTSA for exemption from the separate compliance provisions of section 503 of Title V. Such a petition must be granted unless the agency finds that doing so would result in reduced employment in the U.S. automobile industry.

Volkswagen of America, Inc. (VWoA) has been the only manufacturer to petition NHTSA for an exemption from the separate compliance provision. The agency granted the petition for relief on October 23, 1981. The agency concluded that granting the petition would not result in adverse effects on employment in the U.S. automobile industry.

As required by the Act of 1980 (section 512(c)(1) of Title V), the Secretaries of Transportation and Labor have made during 1985 their fourth annual examination of the impact of the domestic content amendment to Title V. During 1985, domestic auto industry employment grew as production increased. Through September 1985 (the latest figures available when this report was prepared), domestic passenger production rose 6.5 percent over the same period in 1984. VWoA car production grew 20.2 percent; however, VWoA accounts for only 1.1 percent of total domestic car production. According to the U.S. Department of Labor, total employment in SIC (Standard Industrial Classification) 371 (Motor Vehicles and Equipment) rose from an average of 853,400 in January through September 1984 to 872,600 for the same period in 1985.

VWoA expects that its MY 1986 U.S. produced vehicles, like its 1985 models, will contain over 75 percent domestic content. There is no reason, at present, to change the 1981 findings of NHTSA that granting VWoA's petition will promote employment in the U.S. automobile industry without causing undue harm to domestic manufacturers. Also, no evidence has been found that the domestic content provision has permitted a manufacturer of domestically produced cars to attain the 75 percent level, and then subsequently to fall below the 75 percent requirement.

Section V: Use of Advanced Technology

This section fulfills the statutory requirement of the Department of Energy Act of 1978 (Pub. L. 95–238) Title III section 305, which directs the Secretary of Transportation to submit an annual report to Congress on the use of advanced technologies by the automotive industry to improve motor vehicle fuel economy. This report focuses on the introduction of new models, the application of materials to save weight, and the advances in electronics and engine technology which improved fuel economy in model year 1985.

New Models

In 1985 domestic manufacturers introduced new products and replaced or supplemented existing product lines with new, lighter-weight, front-wheel drive models.

General Motors introduced two new front-wheel drive models, the C-body and N-body. C-bodies (the Cadillac Fleetwood/Deville, Buick Electra and Oldsmobile 98) were being built and sold as 1985 models during the second half of the 1984 model year. The C-bodies are designed to replace larger luxury, rear-drive models using the same model names. The new C-bodies weigh over 650 pounds less than the cars they replace. The N-body, the other new GM front-drive car introduced in 1985, is sold under the names of Buick Somerset Regal, Oldsmobile Calais and Pontiac Grand Am. The N-body is sized between the mid-sized A-body (Chevrolet Celebrity, etc.) and the compact J-body (Pontiac Sunbird, etc.)

In 1985, Chrysler introduced the new H-body, a front-wheel drive 4-door sedan. This expanded Chrysler's range of light-weight, front-wheel drive product offerings in the mid-size class. In December 1985, Ford plans to introduce the new Taurus/Sable, which has a lower aerodynamic drag and front-wheel drive design, to compete in the mid-size segment of the market.

New light trucks included GM's new compact van, the Chevrolet Astro and GMC Safari, as well as Ford's new compact van, the MY 1986 Aerostar. American Motors has introduced a new compact Jeep pickup (the Comanche). The new 1985 models introduced by the light truck manufacturers provide consumers a wide choice of fuel-efficient light truck models.

Materials

Reducing weight to improve fuel economy has resulted in new applications for plastics and lightweight metals. Ford Motor Company has introduced a fiber-reinforced plastic driveshaft in the Econoline vans. These non-metallic, one piece driveshafts are made of plastic resin, reinforced with both glass and graphite fibers. They are the first production driveshafts of their kind. Ford expects to save 11 pounds for each application compared to conventional steel shafts.

In model year 1985 GM used glass fiber-reinforced sheet molding compounds (SMC) in the hood, rear doors and roof extension inserts of the Cadillac limousine. These body components are a combination of glass fibers and polyester to achieve the strength, stiffness, and appearance required in exposed body components. The doors were the first compression-molded plastic units to be used on a predominantly steel body. Another, new GM application for plastic in 1985 models is the single-leaf glass fiber-reinforced rear spring design on GM's new compact vans. These new springs saved 54 pounds on each vehicle.

Volkswagen of America is using polyethylene fuel tanks on the Golf automobile. Other new applications for plastics in the auto industry include SMC finishing panels on the back of the Buick Electra, two-piece SMC in the Oldsmobile Firenza line, and soft-fascia (urethane) bumpers on Chrysler's new Lancer and LeBaron GTS models.

Aluminum is being used in a significant number of new applications, involving castings, stampings, extrusions and forgings. Some of the biggest applications from both a materials weight and technological standpoint involved imported components used in domestic automobiles. American Motors Corporation used an all-aluminum turbocharged diesel engine in its 1985 Jeep Cherokee and Wagoneer models. This optional, fuel-efficient power plant was imported from AMC's French partner, Regie Nationale des Usines Renault. Another aluminum engine is featured in Chevrolet's imported Sprint minicar from GM's Japanese affiliate, Suzuki Motor Co., Ltd.

Applications of aluminum radiators are also increasing. Ford has put these into its Ranger pickup trucks after introducing them earlier in the Escort/Lynx, Mark VII, and Tempo/Topaz cars. GM is installing aluminum radiators in

its large front-wheel drive Cadillac, Buick and Oldsmobile cars.

In most applications, the aluminum radiators weigh 20 to 40 pounds less than their copper and brass counterparts. Other applications for aluminum include: a forged engine mount for 4-cylinder GM cars, a stamped aluminum front bumper impact bar on the Oldsmobile Cutlass Ciera, intake manifolds on Chevrolet Corvettes, bumper reinforcements on Chrysler's LeBaron GTS, and driveshafts on the Ford Aerostar.

In 1985, new applications of High Strength Steel (HSS) to replace mild steels extended the growth in the use of this material. Examples of applications are: the front bumper of the Chevrolet Astro, which was integrated into the body of this new van, as well as the platform rear bumper of this van; use of tubular impact bars in GM's Calais, Somerset, and Grand Am models; stamped beams in the doors of Ford's large cars; and rear bumper reinforcement bars on Chrysler's LeBaron GTS.

New applications of other lightweight materials include Chrysler's use of powder metal in rocker arm inserts in the 2.2 liter engine, synchronizer clutch hubs and exhaust valve guides. Cast magnesium electronic fuel injection housings are being used by Chrysler in LeBaron GTS and Lancer cars. Stainless steel manifolds made from lightweight tubular components are being introduced in automobiles produced by GM.

Electronics

The use of electronics continues to increase in new cars. For example, domestic automakers are continuing to increase the application of electronic engine controls. According to Ward's, 1985 *Automotive Yearbook*, electronic spark timing was used in 87.7 percent of the 1984 automobiles. Application of every electronic engine component in the Ward's survey except feedback carburetors increased in 1984, and this trend continued in 1985. GM added electronic port fuel injection to Chevrolet's 2.8 liter V–6 and their 5.0 liter V–8. A new version of Buick's 3.0 liter V–6 includes multi-point injection and computer controlled coil ignition. Ford offers an optional multi-point fuel-injected 1.9 liter 4-cylinder engine in the Escort/Lynx carline, and has also added an electronic fuel injection system to its 2.3 liter Tempo/Topaz engine. Honda now offers electronic fuel injection on the Accord, and Volkswagen has installed an electronically controlled mechanical fuel injection system on the Golf. Another electronic device that has experienced increased application is shift indicator lights which provide a mileage bonus on manual transmission automobiles.

The present stable supply of moderately-priced fuel has supported consumer preference for larger cars and for performance. Diesel sales have almost disappeared. However, manufacturers continue to introduce fuel-efficient technology. New models are being introduced with rounder contours to improve aerodynamics. Electronic applications have improved engine performance and fuel economy. Front-wheel drive automobiles continue to replace less efficient rear-wheel drive automobiles, and new uses of alternative materials are being tried. These changes have helped the domestic auto industry to continue to improve the CAFE of their fleets.

[FR Doc. 86–3712 Filed 2–20–86; 8:45 am]
BILLING CODE 4910–59–M

Rulemakings, Research, and Enforcement Programs; Public Meeting and Announcement of Technical Meeting on Current, Planned and Prospective Research on Crash Avoidance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research, and enforcement programs, and at which NHTSA's current, planned and prospective research on crash avoidance will be discussed. The agency seeks papers and oral presentations from industry and the private sector on crash avoidance research and development. The agency has chosen to combine the quarterly public meeting with a technical meeting to reduce the costs which would be incurred if separate meetings were held.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on April 15, 1986, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs must be submitted in writing by April 4, 1986. If sufficient time is available, questions received after the April 4 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by April 4 and the issues to be discussed will be mailed to interested persons on April 9, 1986 and will be available at the meeting.

Requests to make a formal presentation on crash avoidance research must be submitted not later than March 21, 1986.

ADDRESSES: Questions for the April 15, meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590

Requests to make a formal presentation on crash avoidance should be addressed to Robert Nicholson, NRD–50, Office of Crash Avoidance Research, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

The public meeting will be held in Room 2230, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA will hold a meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on April 15, 1986. The meeting will begin at 10:30 a.m., and will be held in Room 2230, Department of Transportation, 400 Seventh Street SW., Washington, DC. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington DC 20590.

At the close of the usual question and answer session a discussion of the agency's crash avoidance research program will be held. Immediately thereafter (or on the following day, April 16, 1986, depending on the number of participants desiring to make presentations), the agency will conduct a technical meeting at which presentations will be made regarding the agency's crash avoidance research program. Several agency officials involved in the program will make presentations, and industry representatives and other interested individuals are invited to make similar technical presentations.

The complete details on the technical meeting on crash avoidance research will be provided in a subsequent notice.

Issued on February 18, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86-3715 Filed 2-20-86; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

United States Advisory Commission on Public Diplomacy Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held March 5, 1986, in Room 600, 301 4th Street SW., Washington, DC at 11:05 a.m.

The Commission will meet with Mr. Carl Gershman, President, National Endowment for Democracy, to discuss Endowment projects and programs.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: February 12, 1986.

Charles N. Canestro,

Management Analyst, Federal Register Liaison.

[FR Doc. 86-3793 Filed 2-20-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 35
Friday, February 21, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL COMMUNICATIONS COMMISSION

February 14, 1986.

The Federal Communications Commission will hold an Open Meeting on the subject listed below on Friday, February 21, 1986, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, DC.

Agenda, Item No., and Subject

Common Carrier—1—Title: The need to promote competition and efficient use of Spectrum for Radio Common Carrier Services. Summary: The Commission will consider proposals for the designation of a Mobile Services Interconnection Ombudsman and for the institution of a fact-finding inquiry into post-divestiture BOC practices in the provision of paging and conventional mobile services.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congressional and Public Affairs, telephone number (202) 254-7674.

Issued: February 14, 1986.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-3921 Filed 2-19-86; 1:52 pm]

BILLING CODE 6712-01-M

2

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, February 26, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 18, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-3868 Filed 2-19-86; 10:08 am]

BILLING CODE 6210-01-M

3

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, March 4, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington DC 20594.

STATUS: The first two items to be discussed will be open to the public. The last item will be closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* China Airlines, Boeing 747 SP, N4522V, 300 Nautical Miles Northwest of San Francisco, California, February 19, 1985.
2. *Marine Accident Report and Recommendation Letters:* Collision between the charter fishing vessel GULF QUEEN and the crewboat M/V ALAN McCALL, Gulf of Mexico, March 9, 1985.

Opinion and Order: Administrator V. Crawford, Docket SE-6544; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: February 19, 1986.

Catherine T. Kaputa,

Federal Register Liaison Officer.

[FR Doc. 86-3907 Filed 2-19-86; 12:45 pm]

BILLING CODE 7533-01-M

4

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of February 17, 24, March 3, and 10, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of February 17

Wednesday, February 19

2:00 p.m.
Staff Briefing on Integrated Safety Assessment Program (Public Meeting)

Thursday, February 20

2:00 p.m.
Report on Safety Goal Evaluation (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule Establishing Criteria for Reopening Records to Formal Licensing Proceedings (postponed from February 13)
b. Petitions for Hearing on Licensee Requests for Authorization for Onsite Disposal of Low-Level Radioactive Waste Under 10 CFR § 20.302(a)

Week of February 24—Tentative

Tuesday, February 25

10:00 a.m.
Briefing by Incident Investigation Team on Status of Rancho Seco (Public Meeting)

Wednesday, February 26

2:00 p.m.
Briefing on NUMARC Initiatives (Public Meeting)

Thursday, February 27

10:00 a.m.
Discussion of DOE High Level Waste Program (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)
2:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6) (if needed)

Week of March 3—Tentative

Wednesday, March 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 10—Tentative

Tuesday, March 11

10:00 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

Wednesday, March 12

10:00 a.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)
2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7) (Tentative)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr-McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

ADDITIONAL INFORMATION: Affirmation of "Request for Reconsideration of TMI-2 Leak Rate Proceeding Notice of Hearing" and "Order on Shoresham Emergency Exercise" were held on February 13.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634-1410.

Julia Corrado,
Office of the Secretary.
February 13, 1986.

[FR Doc. 86-3850 Filed 2-18-86; 4:45 pm]
BILLING CODE 7590-01-M

5

POSTAL SERVICE BOARD OF GOVERNORS

Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold meetings at 1:00 p.m. on Monday, March 3, 1986, in Washington, D.C., and at 8:30 a.m. on Tuesday, March 4, 1986, in the Benjamin Franklin Room U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW, Washington, DC. As indicated in the following paragraph, the March 3 meeting is closed to public observation. The March 4 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, (202) 268-4800.

By telephone vote on February 7 and 10, 1986, a majority of the Members contacted and voting, the Board voted to close to public observation its meeting scheduled for March 3. (See 51 FR 5637, February 14, 1986.) The meeting will concern the January 24, 1986, recommended decision of the Postal Rate Commission on the *Complaint of ADVO-SYSTEM, Inc.*

Agenda

Monday Session

March 3, 1986—1:00 p.m. (Closed)

1. Consideration of the Postal Rate Commission's recommended decision in *Complaint of ADVO-SYSTEM, INC.*, (Docket No. C85-1).

Tuesday Session

March 4, 1986—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, February 3-4, 1986.
2. Remarks of the Postmaster General.
3. Consideration of rates for preferred rate mail.
4. Amendment to the Bylaws of the Board of Governors.
5. Annual Testimony to Legislative Committees.
6. Report on Law Department.
7. Report on Administration Group Programs.
8. Capital Investments:
a. Integrated Retail Terminals.
b. Flat Sorter Machine Enhancements.
c. Pasco., Washington, Main Post Office and Main Vehicle Maintenance Facility.
9. Tentative agenda for April 7-8, 1986, meeting in Atlanta, Georgia.

David F. Harris,
Secretary.

[FR Doc. 86-3892 Filed 2-19-86; 10:42 am]
BILLING CODE 7710-12-M

Federal Register

Friday
February 21, 1986

Part II

Environmental Protection Agency

40 CFR Part 30

Audit Requirements for State and Local Government; General Regulation for Assistance Programs; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[OA-FRL 2896-3]

Audit Requirements for State and Local Government; General Regulation for Assistance Programs

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising EPA's General Regulation for Assistance Programs (40 CFR Part 30) which establishes EPA's requirements for collecting interest, processing and handling (collection), and penalty charges on recipients' debts under EPA assistance agreements. This rule makes interest accrue from the date of the Agency's decision that a debt is owed and requires EPA to charge recipients other than State and local governments a penalty on debts which are more than 90 days past due. EPA is also revising the audit requirements for State and local government recipients and adding OMB Circular A-128 as Appendix E.

DATES: The interest, collection, and penalty provisions of this rule are effective for debts EPA determines are due after February 21, 1986. The audit provision of this rule is effective February 21, 1986. Although the audit provision is effective immediately, comments on the provision are solicited. Submit comments to the address below within 60 days after publication of this document.

ADDRESS: Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Scott McMoran (202) 382-5293.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency's (EPA) General Regulation for Assistance Programs (40 CFR Part 30, September 30, 1983) provides general administrative requirements for all EPA assistance programs. On February 8, 1985, we issued a proposed rule to revise the interest, collection, and penalty provisions of the regulation (40 CFR 30.802 (b) and (c), and 30.1230(a)). This document responds to comments on the proposed revision and makes the change final. This document also implements OMB Circular A-128 issued on April 12, 1985, which establishes audit requirements for State and local government recipients of Federal financial assistance.

Debt Related Charges. 40 CFR 30.802(b) and 30.1230(a) of the current regulation generally provide that EPA will charge recipients interest, collection costs, and a 6% per annum penalty if the debt is not paid within 30 days from the date of the final Agency action. Under EPA's dispute resolution process (40 CFR Part 30, Subpart L), the date of the final Agency action depends on whether recipients request administrative review. After an EPA disputes decision official issues a final decision, the recipient may, within 30 days of the decision, request review of that decision by the appropriate EPA Regional Administrator or Assistant Administrator. In such cases, interest is not charged between the date of the disputes decision official's decision and the review decision issued by the Regional Administrator or the Assistant Administrator.

Delays in repaying debts result in an undue financial loss to the Government and taxpayers in general by reducing the Department of Treasury's investment opportunities and increasing its borrowing costs.

We are amending § 30.802 (b) to make interest accrue on debts not paid within 30 days from the date of the Agency's decision that a debt is owed. We are also amending § 30.1230(a) to make it clear that, for disputed amounts, interest will accrue if payment is not made within 30 days of the disputes decision official's final decision, regardless of whether the recipient requests review of the decision.

Under §§ 30.802 (b) and (c) and 30.1230 (a) and (b) of the current regulation, EPA charges recipients other than State and local governments a penalty of 6% per annum of the amount of the debt if the recipient does not pay the debt within 30 days of the final Agency action. The Debt Collection Act of 1982 (Pub. L. 97-365), however, requires agencies to charge these recipients a penalty on debts which are more than 90 days past due. This rule amends §§ 30.802 (b) and (c) and 30.1230(a) to make EPA's rule consistent with the Debt Collection Act. EPA will charge recipients other than State and local governments a penalty on debts not paid within 120 days of the Agency's decision that a debt is owed.

Under §§ 30.802 (b) and (c) and 30.1230 (a) and (b) of the current regulation, EPA charges recipients other than State and local governments the cost of collecting a debt not paid within the time specified. This rule makes a technical amendment to § 30.802 by moving the collection cost provisions for overdue debts from paragraph (b) to paragraph (c). This rule also revises § 30.1230(a) to explain that any collection costs paid are refundable only if EPA determines that the entire amount of the debt is not owed.

We received five sets of comments on the proposed rule. The most often repeated comment was that if EPA is going to charge recipients interest, collection, and penalty charges on overdue debts, then EPA should pay interest on refunds due recipients and on late EPA payments to recipients. The Federal Prompt Payment Act (Pub. L. 97-177) requires Federal agencies to pay interest on bills under contracts they fail to pay within 30 days. That Act does not apply to grant programs and there is no corresponding authority requiring or allowing payment of interest under grants. EPA should not, however, routinely delay payments under its grant programs. If delays occur, recipients should contact the grants administration staff in the appropriate EPA regional or Headquarters office to determine the problem.

A second comment was that EPA auditors do not conduct exit conferences with recipients nor do recipients have an opportunity to comment on audit report findings before the disputes decision official makes a final decision. EPA Directive 2750 provides that our auditors may conduct exit conferences with recipient officials. If EPA's auditors do not conduct exit conferences, recipients should contact EPA's Divisional Inspectors General. Also, EPA should generally afford recipients the opportunity to comment on final EPA audit reports before issuing final decisions.

A third comment was that EPA should not delay its request for a repayment and then charge interest from the "due" date. A debt is due only after EPA notifies the recipient that the debt is owed.

The final comment was that EPA should refund a portion of the processing and handling charges when, as a result of review under 40 CFR Part 30, Subpart L, the amount of the debt is reduced. The proposed regulation stated that recipients would not receive a refund of the processing and handling charge even if their debt was reduced as a result of administrative review. This is because the processing and handling charge is based on the cost to EPA of processing a claim against recipients. That cost is the same for a large debt as for a small one. We have revised § 30.1230(a) to make it clear that if EPA determines that the recipient's entire debt should be refunded, the recipient will receive a complete refund.

Audit provisions. On April 12, 1985, the Office of Management and Budget issued OMB Circular A–128 which implements the Single Audit Act of 1984 (Pub. L. 98–502). The Single Audit Act establishes audit requirements for State and local government recipients of Federal assistance. EPA's general regulation for assistance programs currently requires State and local government recipients to comply with the audit requirements of OMB Circular A–102, Attachment P.

Although we did not solicit comments on the implementation of OMB Circular A–128 with our proposed revisions to Part 30 for debt related charges, we are amending Part 30 with this document to implement this new Circular. The change is essentially a technical one and will only minimally affect recipients. The amendment incorporates A–128 as Appendix E to the regulation and eliminates the reference to Attachment P. We are making this change effective immediately, but if you have comments, please submit them to the address noted previously in this preamble within 60 days after publication of this document.

Regulation Development

Under Executive Order 12291, EPA is required to judge whether a regulation is "major" and, therefore, subject to the regulatory impact analysis requirements of the Order. We have determined that this regulation is not "major" as it will not have a substantial impact on the Nation's economy or a large number of individuals or businesses. There will be no major increase in costs or prices for consumers, individuals, industries, or Federal, State, or local governments.

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) I hereby certify that this regulation will not have a significant impact on a substantial number of small entities. This rule is designed to reduce regulation burden to a minimum.

This proposed regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and have been assigned OMB clearance number 2010–0004.

List of Subjects in 40 CFR Part 30

Administrative practice and procedure, Grant programs, Inventions and patents, Copyright, Reporting, Recordkeeping.

Dated: February 8, 1986.

Lee M. Thomas,

Administrator.

Therefore, 40 CFR Chapter I, Part 30 is amended as follows:

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS

1. The Authority Citation for Part 30 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

2. In § 30.510 paragraph (g) is revised to read as follows:

§ 30.510 What type of financial management system must I maintain?

* * * * *

(g) Audits at least every other year on an organization-wide basis or as required by OMB Circular A–128, if applicable (see § 30.540); and

* * * * *

3. In § 30.540 paragraph (b) is revised to read as follows:

§ 30.540 Who will audit my project?

* * * * *

(b) *State and local governments.* (1) State and local governments must comply with the audit requirements of OMB Circular A–128 (see Appendix E). Generally, under A–128 you must conduct an audit each year, unless the Circular permits you to conduct less frequent audits. The Circular provides:

(i) State and local governments that receive $100,000 or more in Federal financial assistance in a year must have an audit made in accordance with the Circular.

(ii) State and local governments that receive $25,000 or more, but less than $100,000, in a year must have an audit made in accordance with the Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

(iii) State and local governments that receive less than $25,000 in a year are exempt from compliance with the Circular and are subject only to the audit requirements prescribed by State and local law or regulation.

(2) EPA will keep audit cognizance over subagreements under the wastewater treatment construction grants program.

* * * * *

4. In § 30.802 paragraphs (b) and (c) are revised to read as follows:

§ 30.802 Under what conditions will I owe money to EPA?

* * * * *

(b) EPA will charge you interest if you fail to pay within 30 days from the date of the Agency's decision that a debt is owed. The interest rate will be the rate established by the Secretary of the Treasury in accordance with the Treasury Fiscal Requirements Manual 6–8020.20. The rates are published quarterly in the **Federal Register.**

(c) If you are not a State or local government, EPA will charge you its cost to process and handle the overdue debt at the end of each 30 day period the debt is overdue, and a penalty of 6% per annum if the debt is not paid within 120 days after the date of the Agency's decision that a debt is owed.

* * * * *

5. In § 30.1230 paragraph (a) is revised to read as follows:

§ 30.1230 Will I be charged interest if I owe money to EPA?

(a) Interest will accrue on any amounts of money due and payable to EPA from the date of the disputes decision official's final decision, even if you request review of the decision under this subpart. Only full payment of the debt within 30 days of the disputes decision officials' final decision will prevent EPA from charging interest. If you pay a debt but request review under this subpart and the amount of the debt is reduced as a result of the review, EPA will refund the interest and penalty charges that you paid on the adjustment. However, processing and handling charges which you may have paid are refundable only if EPA determines that the entire amount of the debt is not owed.

* * * * *

6. Add a new Appendix E to read as follows:

Appendix E—Part 30 Audit Requirements for State and Local Government Recipients

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards for Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance

programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurance they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in additon to the audits made by recipients pursuant to

this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for congnizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective actionis not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular, so that the additional audits build up such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also program 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assitance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The author's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit its completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries,* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,
Director.

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 96–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $308,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

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Friday
February 21, 1986

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 45 and 52

Federal Acquisition Regulation (FAR); Use of Property Clauses in Service Contracts; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

Federal Acquisition Regulations (FAR); Use of Property Clauses in Service Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulations (FAR) 45.103, 45.106 and 52.245–4 to clarify the contractor's responsibility for Government-furnished property under service contracts performed at Government installations.

Comments: Comments should be submitted to the FAR Secretariat at the address shown below on or before April 22, 1986, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–75 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Questions have arisen concerning contractor responsibility for Government-furnished property during the performance of service contracts when the property is located at Government installations where the contractor has less than full control over the property. The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council have determined that under this circumstance the Government should be responsible for the property and propose to revise FAR 45.103, 45.106 and 52.245–4 to reflect this policy.

B. Regulatory Flexibility Act Analysis Summary

Economic Impact of Proposed Rule

Incorporation of the proposed rule in the Federal Acquisition Regulation may result in a significant economic impact on a substantial number of small entities. However, information currently available is insufficient to permit a determination as to the extent of such economic impact, and comments that will permit a determination are hereby solicited.

Alternatives to the Proposed Rule

The proposed rule is expected to have a favorable economic impact on small entities. The proposed language should lower contract costs and encourage small and disadvantaged businesses to compete.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed changes to FAR 45.103, 45.106, and 52.245–4 clarify the contractor's responsibility for Government-furnished property and do not impose any additional reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: February 14, 1986.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 45 and 52 be amended as set forth below:

1. The authority citation for Parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2453(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.103 is amended by removing in paragraph (b)(2) the word "or"; by removing in paragraph (b)(3) the period at the end of the sentence and inserting in its place the words "; or" and by adding paragraph (b)(4) to read as follows:

§ 45.103 Responsibility and liability for Government property.

* * * * *

(b) * * *

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

* * * * *

3. Section 45.106 is amended by revising paragraph (b)(2) and paragraph (d) to read as follows:

§ 45.106 Government property clauses.

* * * * *

(b) * * *

(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see § 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

* * * * *

(d) The contracting officer may insert the clause at 52.245–4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-priced, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is $50,000 or less unless a contract with an educational or nonprofit organization is contemplated.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.245–4 is amended by revising the introductory text to read as follows:

§ 52.245–4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), insert the following clause:

* * * * *

[FR Doc. 86–3710 Filed 2–20–86; 8:45 am]

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Federal Register

Friday
February 21, 1986

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606, 610 and 640

General Biological Products Standards, Additional Standards for Human Blood and Blood Products; Serologic Test for Antibody to Human T-Lymphotropic Virus Type III (HTLV-III); Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606, 610, and 640

[Docket No. 85N-0032]

General Biological Products Standards, Additional Standards For Human Blood and Blood Products; Serologic Test For Antibody to Human T-Lymphotropic Virus Type III (HTLV-III)

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the biologics regulations to require that each unit of human blood and blood components intended for use in preparing a product be tested and found nonreactive by an approved serologic test for antibody to human T-lymphotropic virus type III (HTLV-III), using the licensed reagent "Human T-Lymphotropic Virus Type III." HTLV-III is believed to be the etiologic agent of acquired immunodeficiency syndrome (AIDS). FDA believes that the routine testing of blood by an approved serologic test for antibody to HTLV-III should decrease the risk of transmitting AIDS by the transfusion of blood and blood components and by the parenteral use of certain plasma derivatives.

DATES: Written comments by March 24, 1986. FDA is proposing that any final rule based on this proposal be effective 30 days after the date of its publication in the **Federal Register**.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steve F. Falter, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: Under the Public Health Service Act (42 U.S.C. 262), FDA is proposing to amend the biologics regulations (21 CFR Parts 606, 610, and 640) to require that each donation of blood or blood components intended for use in a biological product be tested by a serologic test for antibody to HTLV-III approved for such use by the Director, Office of Biologics Research and Review (OBRR). The proposed requirements would apply to all blood and blood components intended for use in preparing any product, including products not subject to licensure, such as in vitro diagnostic reagents derived from human blood source material. Accumulated evidence has shown that HTLV-III, also called lymphadenopathy-associated virus (LAV), is the probable etiologic agent of AIDS. Currently, the only approved serologic test for HTLV-III detects antibody to HTLV-III.

The test uses a reagent licensed under the Public Health Service Act with the proper name "Human T-Lymphotropic Virus Type III." FDA is proposing to use the general term "a serologic test for HTLV-III" in the regulations so that any improved test developed in the future may be put into use immediately upon approval by the Director, OBRR, without further amendment of the regulations being required. Routine screening of blood by a serologic test for HTLV-III is expected to decrease the risk of transmitting AIDS by blood transfusion and parenteral use of other products derived from blood.

Throughout this proposed rule, FDA is using the proper names for biological products established in a final rule published in the **Federal Register** of January 29, 1985 (50 FR 4128); effective January 29, 1986.

I. Background

AIDS is a serious, often fatal, disease affecting the immune system. AIDS is known to be transmitted by contact with the blood or semen of a person carrying the virus. Certain population groups are at a higher risk than the general population for contracting AIDS. These high-risk groups include any male who has had sex with a male since 1977, abusers of intravenous drugs, hemophiliacs, and the sexual partners of individuals in a high-risk group. A donor carrying HTLV-III may also transmit the virus to another person by transfusion of blood or a blood component or by the parenteral administration of certain high-risk plasma derivatives made from the donor blood, such as Antihemophilic Factor. Only a small fraction, slightly more than 2 percent, of the persons with AIDS are believed to have contracted the illness from blood and blood products carrying HTLV-III. Nevertheless, the potential for blood, blood components, and blood products to transmit HTLV-III virus has caused great concern within the Department of Health and Human Services, the blood bank community, plasma collection centers, and among the users and recipients of blood and blood products.

In early 1983, FDA issued letters to all establishments that collect blood and blood components or use blood components for further manufacture into blood derivatives. The letters contained recommendations to decrease the potential risk of transmitting HTLV-III virus by transfusion or by the use of certain plasma derivatives. Basically the recommendations were to: (1) Provide educational material relating to AIDS so that donors would know when they were in a high-risk group; (2) screen donors by history and examination for the early signs and symptoms of AIDS and AIDS-related conditions; and (3) advise donors that members of high-risk groups should voluntarily exclude themselves from donating. FDA updated these recommendations in December 1984 (Ref. 1). Blood establishments are continuing to follow these recommendations. However, because apparently healthy individuals unknowingly may be carrying the AIDS virus in their blood, some cases of transfusion-related AIDS and AIDS transmitted by certain plasma derivatives will continue to occur.

In early 1984, scientists at the National Institutes of Health published evidence that HTLV-III was the probable etiologic agent of AIDS (Ref. 2). The scientists also identified a laboratory test for detecting antibody to HTLV-III (Ref. 3). The Department of Health and Human Services, recognizing that the laboratory test could be used for the routine screening of blood by blood banks and plasma centers published a notice in the **Federal Register** of May 3, 1984 (49 FR 18899), soliciting applications to develop and distribute an assay system for the detection of antibody to HTLV-III. Five applicants were selected, and they immediately began to develop and test the assay system. FDA has issued a license to the five manufacturers to manufacture the reagent, Human T-Lymphotropic Virus Type III, to be used in the text system to detect antibody to HTLV-III. In the near future, FDA may license other manufacturers of the reagent. Adequate supplies of the licensed reagent are now available to perform routine testing of blood to detect antibody to HTLV-III by blood banks and plasma centers. Indeed, such establishments already have begun testing donor blood for antibody to HTLV-III.

It is important to note that the available test system detects human antibody to HTLV-III produced in response to exposure to the HTLV-III virus. The test does not detect the presence of the virus itself. In several studies, HTLV-III has been recovered from a high percentage of individuals in high-risk groups who concurrently have detectable antibody to HTLV-III (Refs. 4 and 5). Similarly, from 22 to 87 percent

of asymptomatic persons in various high-risk groups were found to have detectable antibody to HTLV-III (Refs. 6 through 13). In contrast, antibody to HTLV-III has been detected in less than 1 percent of asymptomatic individuals not known to be in a high-risk group (Refs. 3, 6, 7, 8, 14, 15, and 16). Recent limited studies suggest that HTLV-III can be isolated from some asymptomatic individuals who do not have detectable antibody to the virus (Refs. 17 and 18). This would be expected, for example, during the early stage of infection when the body's immunologic defense system has not had time to develop the antibody. Therefore, FDA expects that routine use of this test will reduce greatly the possibility of transmitting the HTLV-III virus by transfusion or parenteral use of certain plasma derivatives, but testing may not eliminate completely the occurrence of such cases.

Results are not yet available from a study designed to provide information concerning the significance of antibody-positive results for asymptomatic individuals, such as blood donors, who are not known to be in a high-risk group. Based on the available information, FDA expects that the routine screening of blood and blood components for antibody to HTLV-III should decrease the risk of transmitting AIDS by transfusion or by parenteral use of blood products.

FDA is proposing in these regulations only the appropriate requirements for the proper testing and labeling of blood necessary to assure the continued safety of blood, blood components, and blood products. In the *Morbidity and Mortality Weekly Report* of January 11, 1985 (Ref. 19), the Public Health Service (PHS) has provided provisional recommendations concerning testing for antibody to HTLV-III and the interpretation and implications of serologic test results. On February 19, 1985, FDA issued a letter to all registered blood establishments providing additional advice for implementing the PHS provisional recommendations (Ref. 20). FDA updated these recommendations by a letter to all blood establishments dated May 7, 1985 (Ref. 21). On May 25, 1985, PHS published recommendations concerning the testing of donors of organs, tissues, and semen for antibody to HTLV-III (Ref. 22).

II. Proposed Amendments to The Regulations

To assure proper understanding of this discussion and the proposed rule, FDA is defining certain terms applicable to the test for antibody to HTLV-III as follows. During routine testing, each blood sample is tested according to the directions supplied by the manufacturer of the test kit and, as described in the directions, each sample is determined to be *reactive* or *nonreactive*. A reactive result indicates the possible presence of HTLV-III antibody in the sample. Reactive samples are tested again and a sample that is found to be reactive on two independent assays is considered to be *repeatedly reactive*. A sample is considered to be *positive* for antibody to HTLV-III when it has tested repeatedly reactive.

In the following paragraphs, FDA is discussing each of the proposed amendments to the regulations:

A. Instruction Circular

In the **Federal Register** of August 30, 1985 (50 FR 35458), FDA published a final rule that revised the labeling requirements for blood and blood components. The final rule becomes effective on September 2, 1986. In that final rule, FDA codified under § 606.122 requirements for the content of an instruction circular that must be made available to users of blood and blood components intended for transfusion. The instruction circular provides the users with the information necessary for the proper use of blood and blood components. FDA believes that the results of the serologic test for HTLV-III are necessary information of which the user should be made aware. Accordingly, FDA is proposing to amend § 606.122(e) to require that blood establishments revise their instruction circulars to include a statement that all blood products are nonreactive by a serologic test for HTLV-III. Although FDA is not proposing to require a specifically worded statement, the agency recommends that all instruction circulars be consistently worded. Accordingly, FDA recommends that either of the following statements be included on the instruction circular: "Nonreactive by serologic test for HTLV-III," or, if combined with the existing statement concerning hepatitis B testing, "Nonreactive when tested for HBsAg and HTLV-III by FDA required tests." FDA also recommends that either of these statements be included on the container label of Source Plasma (see paragraph II. G. of this preamble) or other blood and blood components intended for further manufacture.

FDA proposes to require that the instruction circular be revised to include the proposed statement by 30 days after the date of publication in the **Federal Register** of a final rule resulting from this proposal. In lieu of reprinting the entire circular, blood establishments may stamp or type an appropriate statement on existing instruction circulars in accordance with the proposed requirement. FDA believes that blood establishments will have revised printed labeling including the proposed statement in use within 1 year after the date of publication in the **Federal Register** of a final rule resulting from this proposal.

FDA believes that most blood establishments will begin routine tests of blood and blood components for antibody to HTLV-III before any final rule based on this proposal is published in the **Federal Register**. FDA recommends that each blood establishment notify the users of its products in writing of the date of initiation of the routine testing program and revise their instruction circular to include one of the proposed statements. Licensed blood establishments should submit to the Director, OBRR, a copy of the revised instruction circular at the time of its distribution.

The instruction circular and Source Plasma label statements recommended in the proposed rule are identical with the labeling statements recommended by FDA for use during the voluntary phase of the testing program (Ref. 20). FDA recognizes that the phrase "by FDA required tests" used in one of the recommended labeling statements is inaccurate during the time that use of the serologic test for HTLV–III is voluntary. However, FDA decided to permit this minor inaccuracy so that blood establishments will not be required to relabel their products at the time the test becomes mandatory.

The proposed rule would require that all source blood and blood components used to manufacture blood derivatives be nonreactive to a serologic test for HTLV–III and labeled as nonreactive to the HTLV–III test. However, FDA is not proposing to require that labeling for each of the various blood derivatives manufactored from blood and blood components contain a similar statement that the source materials used to make the products were tested for HTLV–III and found nonreactive. FDA is confident that by the time a final rule based on this proposal is published, manufacturers of derivatives at risk for transmitting HTLV virus will be using voluntarily only source materials found nonreactive to a serologic test for HTLV–III. Therefore, FDA has decided not to require use on labeling for blood derivate products of a standard labeling statement that the derivative product was prepared from source materials found nonreactive to a serologic test for HTLV–III, because such a labeling

requirement would provide no information to users that is essential for the proper use of the products. FDA intends to permit manufacturers to voluntarily amend product labeling for derivatives to include such information.

Manufacturers of licensed in vitro diagnostic products label their products with general cautionary statements such as "Caution: Human Blood Was Used in Manufacturing this Product. Handle as if Capable of Transmitting Infectious Agents." Accordingly, FDA is not proposing labeling changes for in vitro diagnostic products at this time.

B. HTLV–III Testing Requirements

FDA is proposing to add § 610.45 *HTLV–III requirements* that would include: (1) testing requirements; (2) requirements concerning who may perform the test; and (3) restriction on the use of products testing positive by a serologic test for HTLV–III.

In proposed § 610.45(a), FDA is proposing to require that each unit of human blood or blood components intended for use in preparing a biological product to be tested by a serologic test for HTLV–III approved for such use by the Director, OBRR. Currently, FDA has approved only the test for detecting antibody to HTLV–III. FDA would permit testing establishments to put into use the approved test for detecting antibody to HTLV–III without further FDA approval, provided the test method is used as recommended by the manufacturer of the licensed reagent.

Proposed § 610.45(a) would provide that a blood establishment may issue blood and blood components before the serologic test for HTLV–III is completed under circumstances approved in writing by the Director, OBRR, providing the testing is completed as soon as possible thereafter. This provision would allow for the manufacture of certain highly perishable blood products, such as interferon, which are manufactured from source leukocytes (whire blood cells). For optimal production, interferon should be manufactured within 24 hours after the leukocytes are collected. Performance of the complete HTLV–III test before shipping the leukocytes may not provide sufficient time to ship the leukocytes to the manufacturing site. To obtain FDA approval for shipment prior to completion of testing, the agency would require that both the collection and manufacturing facility establish specific procedures for collection, shipment, and quarantine of a blood product before testing is completed. FDA has in § 610.40(b)(4) a similar provision applicable to the testing of blood and blood components for hepatitis B surface antigen (HBsAg). (See the **Federal Register** of June 29, 1984; 49 FR 26717).

In proposed §§ 610.45(a), FDA also is proposing to permit blood establishments to issue blood and blood products in dire emergencies before the results of a serologic test for HTLV–III are available. FDA considers a "dire emergency" to be a life-threatening situation where the patient's need for the blood or blood components is so acute as to preclude the completion of testing before administration of the blood or blood components. The proposed language is consistent with current requirements in 21 CFR 610.40(b)(4) that apply to the testing of blood of hepatitis B surface antigen (HBsAg).

FDA is proposing to amend existing § 640.2(f) to reference the testing requirements of proposed 610.45(a). (FDA revised § 640.2(f) previously in the final rule of August 30, 1985.) Section 640.2(f) prescribes procedural requirements applicable to blood and blood components intended for transfusion that are issued before one or more of the tests required by the regulations are completed. Establishments issuing blood and blood components in a dire emergency in accordance with § 610.45(a) would also be required to meet the requirements of § 640.2(f).

FDA notes that tests systems other than the currently approved test are being developed to detect antibody to HTLV–III. These test systems, such as the Western blot method, are very useful for research purposes but are not suitable at this time for routine use for screening large numbers of samples. At this time, FDA is neither requiring nor specifically recommending that the Western blot method be used for testing donor blood. FDA believes that the test methods and reagents of these systems need further standardization and the available data are incomplete concerning the sensitivity and reliability of these tests.

c. Testing Responsibility

In proposed § 610.45(b), FDA is proposing to permit qualified establishments other than the collecting establishments to perform the serologic test for HTLV–III. This proposed amendment is consistent with current requirements in 21 CFR 610.40(b) that apply to the testing of blood for HBsAg.

D. Restrictions on Use

In proposed § 610.45(c), FDA is proposing to require that blood and blood components that are positive to a serologic test for HTLV–III, or collected from a donor known to be positive to a serologic test for HTLV–III, may not be used for preparing any product, including products not subject to licensure, except as described below. FDA recognizes that valuable diagnostic or therapeutic agents may be developed in the future for which blood or blood components containing antibody to HTLV–III are essential source materials. However, FDA believes that inappropriate handling, labeling, or use of such blood could be hazardous to the public health. Therefore, FDA is proposing to restrict the use of blood and blood components containing antibody to HTLV–III to assure that FDA may adequately monitor the handling, labeling, and use of such blood and blood components.

Under proposed § 610.45(c)(1), blood establishments intending to distribute blood or blood components positive to a serologic test for HTLV–III would apply for approval to the Director, OBRR. The written application would describe the intended use of the positive blood, including identification of all consignees and the procedures for collecting, handling, labeling, and shipping the blood.

Under proposed § 610.45(c)(2), FDA would not apply these restrictions to certain cases when the positive blood or blood components are not intended for commercial distribution or for use in preparing a product. Such cases include: (1) The distribution of small blood, plasma, or serum samples, if not intended for use in manufacturing a product; (2) the in-house use of positive blood and blood components for research purposes; and (3) the noncommercial distribution of blood and blood components for research purposes. FDA believes that the proposed restrictions will assure the continued public health while not impeding continuing research efforts directed toward AIDS.

E. Laboratory Tests and Testing the Blood (§§ 640.5, 640.14, 640.23, 640.33, 640.53)

FDA is proposing to amend the sections listed above to reference the testing requirements in § 610.45(a). In § 640.5, FDA proposes to add paragraph (f) to reference the testing requirements in § 610.45. In effect, FDA is proposing to require that the source blood of all blood and blood components intended for transfusion be tested by a serologic test for HTLV–III. FDA also is proposing to amend §§ 640.14 and 640.53 editorially so that the language is consistent.

F. Testing Source Plasma

FDA is proposing to redesignate the existing text in § 640.67 as § 640.67(a) and add § 640.67(b). In § 640.67(b), FDA is proposing to require that Source Plasma be found nonreactive (nonpositive) by an approved serologic test for HTLV–III. Plasma centers would be required to perform a serologic test for HTLV–III on a blood sample collected from a plasma donor at each visit. A unit of Source Plasma testing positive by a serologic test for HTLV–III could not be used for further manufacture except as provided in proposed § 610.45(c). Under proposed § 610.45(c), FDA would permit the use of positive plasma only for purposes and under conditions specifically approved in writing by the Director, OBRR.

G. Labeling

FDA is proposing to add § 640.70(a)(11) to require that the statement "Nonreactive by serologic test for HTLV–III", or an equivalent statement, be included on the container label of Source Plasma. The proposed label statement would inform users of the Source Plasma that the product was properly tested and found nonreactive by a serologic test for HTLV–III. (See also paragraph II.A. of this preamble).

FDA recognizes that by the proposed effective date of the final rule, 30 days after its publication in the Federal Register, appropriately revised container labels may not be available at all plasma centers. Plasma centers may use means such as an ink stamp or stick-on label to include the information on the container label required by § 640.70(a)(11).

FDA believes that source plasma establishments will have revised printed container labels including the proposed statement in use within 1 year after the date of publication in the Federal Register of a final rule resulting from this proposal.

H. Manufacturing Responsibility

FDA is proposing to amend § 640.71 to permit establishments other than the establishment collecting the Source Plasma to perform the serologic test for HTLV–III. The proposed amendment is consistent with the intent of proposed § 610.45(b).

I. Records

FDA is proposing to amend § 640.72 to provide that negative test results for the serologic test for HTLV–III need not be kept in individual Source Plasma donor records if the test results are maintained elsewhere at the center where the donor's plasma was collected. This amendment will allow plasma centers to avoid duplicative and unnecessary recordkeeping.

III. Regulations Affected by the Proposed Amendments

In the following paragraphs, FDA discusses the effect of the proposed rule on existing requirements in the current good manufacturing practice for blood and blood components regulations at 21 CFR Part 606.

A. Facilities

Under § 606.40(a) (4) and (6), all blood establishments would be required to provide adequate space in a designated location to quarantine blood and blood components that were tested by a serologic test for HTLV–III and the test results were either questionable or reactive. Test results are questionable when, for example, the test results are close to the cut-off value, the control samples are out of range, or duplicate samples run at the same time have conflicting results. Such blood and blood components should remain in quarantine until test results show the blood and blood components to be nonreactive for antibody to HTLV–III. Under § 606.40(d)(2), blood establishments would be required to have adequate facilities to provide for the safe and sanitary disposal of blood and blood components positive by a serologic test for HTLV–III. FDA considers either autoclaving or incineration to be appropriate means for the safe and sanitary disposal of blood and blood components.

B. Standard Operating Procedures

Under § 606.100(b)(7), each blood establishment would be required to maintain on the premises and follow a written standard operating procedure describing the procedures for the serological test for HTLV–III, including followup procedures for any reactive tests.

C. Records

Under § 606.160(a) (1) and (2), blood establishments would be required to keep adequate records of the results of the serologic test for HTLV–III, including a record of the master lot number of the test kit and lot number of the HTLV–III reagent used for each test. The test results should be traceable to the individual donor and blood product.

Like all medical records, the test results should be recorded and stored in a manner to protect their continued confidentiality. Blood establishments should exercise particular care to assure confidentiality of positive test results. Disclosure of this information for other than medical or public health purposes could lead to serious consequences for the individual. Donor screening procedures should also be designed with safeguards to protect against unauthorized disclosure.

Under § 606.160(e), blood establishments would be required to maintain a permanent record identifying those donors whose blood is positive by a serologic test for HTLV–III so that in the future, blood and blood components from such individuals are not distributed. Whenever appropriate, donor deferral lists should be general, without indication of the reason for deferral. At the present time, there is inadequate evidence to determine how long an asymptomatic individual may carry HTLV–III virus in the blood. Until adequate data are available to show that infection with HTLV–III is self-limiting within a specific time period, individuals who have tested positive to a serologic test for HTLV–III should be permanently deferred from donating blood and blood components for routine purposes.

D. Donor Notification

At this time, FDA is not proposing specific regulations requiring the notification of a donor when the test for antibody to HTLV–III is repeatably positive. (A test is repeatably positive when upon retest using the licensed test system is repeatably reactive or upon retest using another technique, such as the Western blot, is positive for HTLV–III antibody.) However, FDA continues to support the recommendations of PHS for notification of donors, issued on January 11, 1985 (Ref. 19). Whatever procedures are selected, the blood establishment should assure that the donor is notified in as sensitive and informative a manner as possible.

IV. References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday. FDA intends to supplement the materials on file for this document as additional information, such as information related to licenses issued subsequent to this notice, becomes available.

1. FDA letter to all registered blood establishments dated December 14, 1984.

2. Gallo, R.C., et al., "Frequent Detection and Isolation of Cytopathic Retroviruses (HTLV–III) from Patients with AIDS and at Risk for AIDS," *Science*, 224:500–503, 1984.

3. Sarngadharan, M.G., et al., "Antibodies Reactive with Human T-Lymphotropic Retroviruses (HTLV–III) in the Serum of

Patients with AIDS," *Science*, 244:506–508, 1984.

4. Groopman, J.E., et al., "HTLV–III in Saliva of People with AIDS-Related Complex and Healthy Homosexual Men at Risk for AIDS," *Science*, 226:447–449, 1984.

5. Zagury, D., et al., "HTLV–III in Cells Cultured from Semen of Two Patients with AIDS," *Science*, 226:449–451, 1984.

6. Melbye, M., et al., "Seroepidemiology of HTLV–III Antibody in Danish Homosexual Men: Prevalence, Transmission, and Disease Outcome," *British Medical Journal*, 289:573–575, 1984.

7. CDC, "Antibodies to a Retrovirus Etiologically Associated with Acquired Immunodeficiency Syndrome (AIDS) in Populations with Increased Incidences of the Syndrome," *Morbidity and Mortality Weekly Report*, 3:377–379, 1984.

8. Weiss, S.H., et al., "Screening Test for HTLV–III (AIDS Agent) Antibodies: Specificity, Sensitivity, and Applications," *Journal of the American Medical Association*, 253:221–225, 1985.

9. Goedert, J.J., et al., "Determinants of Retrovirus (HTLV–III) Antibody and Immunodeficiency Conditions in Homosexual Men," *Lancet*, 2:711–716, 1984.

10. Spira, T.J., et al., "Prevalence of Antibody to Lymphadenopathy-Associated Virus Among Drug-Detoxification Patients in New York," *New England Journal of Medicine*, 311:467–468, 1984.

11. Ramsey, R.B., et al., "Antibody to Lymphadenopathy-Associated Virus in Hemophiliacs with and without AIDS," *Lancet*, 2:397–398, 1984.

12. Tsoukas, C., et al., "Association of HTLV–III Antibodies and Cellular Immune Status of Hemophiliacs," *New England Journal of Medicine*, 311:1514–1515, 1984.

13. Harris, C.A., et al, "Antibodies to a Core Protein (p. 25) of Lymphadenopathy Associated Virus (LAV) and Immunodeficiency in Heterosexual Partners of AIDS Patients," presentation at 24th Interscience Conference on Microbial Agents and Chemotherapy, Washington, DC, 1984.

14. Levy, J.A., et al., "Isolation of Lymphocytopathic Retroviruses from San Francisco Patients with AIDS," *Science*, 225:840–842, 1984.

15. Safai, B., et al., "Seroepidemoliogical Studies of Human T-Lymphotropic Retrovirus Type III in Acquired Immunodeficiency Syndrome," *Lancet*, 1:1438–1440, 1984.

16. Laurence, J., et al., "Lymphadenopathy Associated Viral Antibody in AIDS," *New England Journal of Medicine*, 311:1269–1273, 1984.

17. Salahuddin, S.Z., et al., "HTLV–III in Symptom-Free Seronegative Persons," *Lancet*, 2:1418–1420, 1984.

18. Groopman, J.E., unpublished data.

19. CDC, "Provisional Public Health Service Inter-Agency Recommendations for Screening Donated Blood and Plasma for Antibody to the Virus Causing Acquired Immunodeficiency Syndrome," *Morbidity and Mortality Weekly Report*, 34:1–5, 1985.

20. FDA letter to all registered blood establishments, dated February 19, 1985.

21. FDA letter to all registered blood establishments, dated May 7, 1985.

22. PHS, "Testing Donors of Organs, Tissues, and Semen for Antibody to Human T-Lymphotropic Virus Type III/ Lymphadenopathy-Associated Virus," *Morbidity and Mortality Weekly Report*, 34:294, 1985.

23. Transcript of Feb. 22, 1985 meeting.

24. Transcript of July 31, 1985 public meeting (when available).

25. Data summaries supporting licensure of Human T-Lymphotropic Virus Type-III (when available).

V. Economic and Environmental Considerations

The agency has determined pursuant to 21 CFR 25.24(c)(10) (April 26, 1985; 50 FR 16636) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this proposed rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96–354).

FDA concludes that a little over 2,000 establishments, about half of which are small businesses, would be affected by the proposed rule. FDA estimates that the proposed rule would require the performance of about 22 million serologic tests for HTLV-III antibody each year: 12 million tests on units of blood and 10 million tests on units of Source Plasma. The majority of the nation's blood banks and plasmapheresis centers, both large and small, are expected to perform the HTLV-III antibody test voluntarily even in the absence of this regulation. Officials of the American Blood Resources Association, the American Red Cross, the American Association of Blood Banks, and the Council of Community Blood Centers have stated that their organizations will voluntarily undertake to perform the test, even in the absence of a regulation requiring it. These organizations comprise the majority of the blood and plasma collections facilities in the United States. However, while some facilities that are not members of these organizations may not voluntarily undertake the testing program (in the absence of a regulation), their number is not known. Therefore, most of the costs of testing cannot be said to result from the regulation, and the agency has concluded that the regulation does not warrant either inclusion as a "major" rule as defined in Executive Order 12291 or a Regulatory Flexibility Analysis under Public Law 96–354. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

The major direct cost element, the cost of conducting the serological tests for the HTLV-III antibody, is expected initially to be about $3 per test for plasmapheresis centers and about $3 to $5 per test for blood banks. The expectations for testing cost estimates are based on information provided by plasmapheresis centers, blood banks, and independent testing laboratories. It should be noted that their expectations varied widely. For example, the American Red Cross indicated that the $3 to $5 cost figures may be low for their operations, citing their own estimates of from $5 to $10 per test, which may include costs not resulting from this regulation, such as overhead burden and independent HTLV-III tests for high risk populations. Current indications suggest that economies of scale for the HTLV-III antibody test operate to increase the test costs for small-volume testing centers. However, large-volume centers account for the majority of blood processed. Over time, the costs—particularly those at the higher end of this range—are expected to decrease as experience, increased use of computers and automation, and competition among producers of the test kits bring costs down. If these expected cost decreases indeed occur, and the average overall cost were on the order of $3, then the nationwide costs of processing the 12 million blood units and 7.5 million plasma donations collected annually would be somewhat less than $66 million. FDA estimates that at least 95 percent of blood establishments will initiate voluntarily a testing program for HTLV-III antibodies even in the absence of the proposed rule. Therefore, FDA estimates that direct costs of the proposed rule itself amount to a maximum of 5 percent of the total direct costs of the testing program.

Other direct costs of the testing program include the cost of retesting blood that has ambiguous or positive test results, the cost of disposing of and replacing discarded blood, and modest costs associated with labeling changes. It is expected that less than 1 percent of blood will have positive test results, but that an as-yet-unknown portion of these will be false positives. It is also expected that some negative test results (amount unknown) will be false negatives but, because false negative results due to laboratory error are believed to be quite rare, no retesting of negative results is required or planned at this time. Furthermore, indirect costs resulting from the tests may be substantial. Although indirect costs

cannot be quantified at this time, they include the costs of additional testing that may occur as part of the medical evaluation, notifying and counseling persons with positive test results, and the increased medical costs for followup of persons with positive test results. These medical costs will be partially or totally offset by the reduction in medical costs for those who are spared from AIDS as a result of the testing program. Another effect of the regulation will be to facilitate third-party payment for the incremental cost of performing the HTLV-III tests.

FDA cannot at this time quantify the benefits of the proposed rule, which are related primarily to the expected decrease in the risk of transmitting AIDS by transfusion. Much of this benefit would take place even in the absence of this regulation, since most of the blood industry is expected to institute HTLV-III antibody testing even without the regulation. The main benefits of the regulation are to standardize industry practices, thereby providing a more complete and timely assurance of the continued safety of the nation's blood supply.

The anticipated costs are insufficient to warrant designation of this proposal as a major rule under any of the criteria specified under section 1(b) of Executive order 12291 or to require a regulatory flexibility analysis. Accordingly, under section 605(b) of the Regulatory Flexibility Act, the Commissioner of Food and Drugs certifies that this rulemaking, if promulgated, will not have a significant economic impact on a substantial number of small entities. A copy of the threshold assessment supporting this determination is on file with the Dockets Management Branch.

Sections 640.2(f) and 640.72(a)(2) of this proposed rule contain collection of information requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these collection of information requirements. Other organizations and individuals desiring to submit comments on the collections of information requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Bruce Artim.

In addition, the proposed rule would continue present collection of information requirements already submitted to OMB under section 3507 of the Paperwork Reduction Act (§§ 606.100 and 606.160, OMB control number 0910-0116).

VI. Comments

Interested persons may, on or before March 24, 1986, submit to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm., 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. FDA is proposing this rule with a 30-day comment period to expedite publication of any final rule based on this proposal to decrease the risk of transmitting AIDS by blood transfusion and parenteral use of other products made from blood. Accordingly, good cause exists for a comment period of less than 60 days. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be indentified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m., and 4 p.m., Monday through Friday.

List of subjects

21 CFR Part 606

Blood, Laboratories.

21 CFR Part 610

Biologics, Labeling

21 CFR Part 640

Blood, Reporting requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, it is proposed that Parts 606, 610, and 640 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for Part 606 continues to read as follows:

Authority: Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 701–706)); 21 CFR 5.10.

2. In § 606.122 by revising paragraph (e) to read as follows:

§ 606.122 Instruction circular.

* * * * *

(e) Statements that the product was prepared from blood that was nonreactive when tested by a serologic test for HTLV–III and for hepatitis B surface antigen by FDA required tests and nonreactive when tested for syphilis by a serologic test for syphilis (STS).

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCT STANDARDS

3. The authority citation for Part 610 continues to read as follows:

Authority: Sec. 215, 58 Stat. 690 as amended; 42 U.S.C. 216, sec. 351, 58 Stat. 702 as amended, 42 U.S.C. 262; 21 CFR 5.10 and 5.11.

4. In Part 610 by adding § 610.45, to read as follows:

§ 610.45 HTLV–III requirements.

(a) *Testing requirements.* Each donation of human blood or blood components intended for use in preparing a product shall be tested by a serologic test for HTLV–III approved for such use by the Director, Office of Biologics Research and Review. In dire emergency situations, or as otherwise approved in writing by the Director, Office of Biologics Research and Review, blood and blood products may be issued before the results of the serologic test for HTLV–III are available, provided the test required by this paragraph is performed as soon as possible after issuance of the blood or blood product.

(b) *Testing responsibility.* The serologic test for HTLV–III shall be performed by the collection facility, by personnel of an establishment licensed to manufacture blood or blood derivatives under section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), or by a clinical laboratory which meets the standards of the Clinical Laboratory Improvement Act of 1967 (CLIA) (42 U.S.C. 263a), provided the establishment or clinical laboratory is qualified to perform the test.

(c) *Restrictions on use.* (1) Blood, plasma or other blood components that are positive to a serologic test for HTLV–III, or that were collected from a donor known to be positive to a serologic test for HTLV–III, shall not be shipped or used to prepare my product, including products not subject to licensure; except that such blood and blood components shall be shipped or used only for purposes and under conditions specifically approved in writing by the Director, Office of Biologics Research and Review.

(2) The restrictions on use contained in this paragraph shall not apply in the following cases:

(i) The distribution of blood, plasma, or serum samples, except when intended for use in the manufacture of a product;

(ii) The in-house use of blood and blood components for research purposes; or

(iii) The distribution of blood and blood components for research purposes, if not distributed by sale, barter or exchange.

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

5. The authority citation for Part 640 continues to read as follows.

Authority: Sec. 215, 58 Stat. 690 as amended; 42 U.S.C. 216; sec. 351, 58 Stat. 702 as amended, 42 U.S.C. 262; 21 CFR 5.10 and 5.11.

6. In Part 640:

a. In § 640.2 by revising paragraph (f), to read as follows:

§ 640.2 General requirements.

* * * * *

(f) *Issue prior to determination of test results.* Notwithstanding the provisions of § 610.1 of this chapter, blood may be issued by the manufacturer on the request of a physician, hospital, or other medical facility before results of all tests prescribed in § 640.5, the test for hepatitis B surface antigen prescribed in § 610.40(a) of this chapter, and a serologic test for HTLV–III prescribed in § 610.45(a) of this chapter have been completed, where such issue is essential to allow time for transportation to assure arrival of the blood by the time it is needed for transfusion: *Provided,* That (1) the blood is shipped directly to such physician or medical facility, (2) the records of the manufacturer contain a full explanation of the need for such issue, and (3) the label on each container of such blood bears the information required by § 606.121(h) of this chapter.

b. In § 640.5 by adding paragraph (f), to read as follows:

§ 640.5 Testing the blood.

* * * * *

(f) *Serologic test for HTLV–III.* Whole Blood shall be tested by a serologic test for HTLV–III as prescribed in § 610.45 of this chapter.

c. By revising § 640.14, to read as follows:

§ 640.14 Testing the blood.

Blood from which Red Blood Cells are prepared shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

d. In § 640.23 by revising paragraph (a), to read as follows:

§ 640.23 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Platelets shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

e. In § 640.33 by revising paragraph (a), to read as follows:

§ 640.33 Testing the blood.

(a) Blood from which plasma is separated shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a), (b), and (c).

* * * * *

f. In § 640.53 by revising paragraph (a), to read as follows:

§ 640.53 Testing the blood.

(a) Blood from which plasma is separated for the preparation of Cryoprecipitated AHF shall be tested as prescribed in §§ 610.40 and 610.45 of this chapter and § 640.5 (a) (b), and (c).

* * * * *

g. By revising § 640.67, to read as follows:

§ 640.67 Laboratory tests.

(a) *Hepatitis B surface antigen.* Each unit of Source Plasma shall be nonreactive to a test for hepatitis B surface antigen as prescribed in §§ 610.40 and 610.41 of this chapter, except insofar as permitted in § 610.40(d) (2) and (3) of this chapter.

(b) *HTLV–III.* Each unit of Source Plasma shall be nonreactive by a serologic test for HTLV–III as prescribed in § 610.45 of this chapter, except as provided in § 610.45(c) of this chapter.

h. In § 640.70 by adding paragraph (a)(11), to read as follows:

§ 640.70 Labeling.

(a) * * *

(11) The statement "Nonreactive by serologic test for HTLV–III", or equivalent statement.

* * * * *

i. In § 640.71 by adding paragraph (a)(4), to read as follows:

§ 640.71 Manufacturing responsibility.

(a) * * *

(4) A serologic test for HTLV–III.

* * * * *

j. In § 640.72 by revising paragraph (a)(2), to read as follows:

§ 640.72 Records.

(a) * * *

(2) For each donor, a separate and complete record of all initial and periodic examinations, tests, laboratory data, interviews, etc., undertaken pursuant to §§ 640.63, 640.5, 640.66, and 640.67, except that negative test results for hepatitis B surface antigen, negative test results for the serologic test for HTLV–III, and the volume or weight of plasma withdrawn from a donor need not be kept on the individual donor record: *Provided,* That such information is maintained on the premises of the plasmaphereisis center where the donor's plasma has been collected.

* * * * *

Frank E. Young,

Commissioner of Food and Drugs.

Dated: January 27, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

[FR Doc. 86–3820 Filed 2–20–86; 8:45 am]

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federal register

Friday
February 21, 1986

Part V

The President

Executive Order 12549—Debarment and Suspension

Office of Management and Budget

Guidelines for Nonprocurement Debarment and Suspension; Request for Comments

Federal Register
Vol. 51, No. 35
Friday February 21, 1986

Presidential Documents

Title 3—

The President

Executive Order 12549 of February 18, 1986

Debarment and Suspension

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to curb fraud, waste, and abuse in Federal programs, increase agency accountability, and ensure consistency among agency regulations concerning debarment and suspension of participants in Federal programs, it is hereby ordered that:

Section 1. (a) To the extent permitted by law and subject to the limitations in Section 1(c), Executive departments and agencies shall participate in a system for debarment and suspension from programs and activities involving Federal financial and nonfinancial assistance and benefits. Debarment or suspension of a participant in a program by one agency shall have government-wide effect.

(b) Activities covered by this Order include but are not limited to: grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.

(c) This Order does not cover procurement programs and activities, direct Federal statutory entitlements or mandatory awards, direct awards to foreign governments or public international organizations, benefits to an individual as a personal entitlement, or Federal employment.

Sec. 2. To the extent permitted by law, Executive departments and agencies shall:

(a) Follow government-wide criteria and government-wide minimum due process procedures when they act to debar or suspend participants in affected programs.

(b) Send to the agency designated pursuant to Section 5 identifying information concerning debarred and suspended participants in affected programs, participants who have agreed to exclusion from participation, and participants declared ineligible under applicable law, including Executive Orders. This information shall be included in the list to be maintained pursuant to Section 5.

(c) Not allow a party to participate in any affected program if any Executive department or agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in an affected program. An agency may grant an exception permitting a debarred, suspended, or excluded party to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the reason(s) for deviating from this Presidential policy. However, I intend that exceptions to this policy should be granted only infrequently.

Sec. 3. Executive departments and agencies shall issue regulations governing their implementation of this Order that shall be consistent with the guidelines issued under Section 6. Proposed regulations shall be submitted to the Office of Management and Budget for review within four months of the date of the guidelines issued under Section 6. The Director of the Office of Management and Budget may return for reconsideration proposed regulations that the Director believes are inconsistent with the guidelines. Final regulations shall be published within twelve months of the date of the guidelines.

Sec. 4. There is hereby constituted the Interagency Committee on Debarment and Suspension, which shall monitor implementation of this Order. The

Committee shall consist of representatives of agencies designated by the Director of the Office of Management and Budget.

Sec. 5. The Director of the Office of Management and Budget shall designate a Federal agency to perform the following functions: maintain a current list of all individuals and organizations excluded from program participation under this Order, periodically distribute the list to Federal agencies, and study the feasibility of automating the list; coordinate with the lead agency responsible for government-wide debarment and suspension of contractors; chair the Interagency Committee established by Section 4; and report periodically to the Director on implementation of this Order, with the first report due within two years of the date of the Order.

Sec. 6. The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe government-wide criteria and government-wide minimum due process procedures, and set forth other related details for the effective administration of the guidelines.

Sec. 7. The Director of the Office of Management and Budget shall report to the President within three years of the date of this Order on Federal agency compliance with the Order, including the number of exceptions made under Section 2(c), and shall make such recommendations as are appropriate further to curb fraud, waste, and abuse.

Ronald Reagan

THE WHITE HOUSE,
February 18, 1986.

[FR Doc. 86-3897
Filed 2-19-86; 10:56 am]
Billing code 3195-01-M

OFFICE OF MANAGEMENT AND BUDGET

Guidelines for Nonprocurement Debarment and Suspension

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: This Notice contains a draft memorandum to executive departments and agencies setting forth guidelines called for in Section 6 of Executive Order 12549, "Debarment and Suspension." The Notice seeks public comment on the proposed guidelines and asks for special public attention to several areas.

DATE: To be assured of consideration, comments on the proposed guidelines must be in writing and must be received by April 22, 1986.

ADDRESS: Barbara F. Young-Kahlow, Grants Management, Financial Management Division, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Barbara F. Young-Kahlow, Grants Management, Financial Management Division, Office of Management and Budget, Room 10215 New Executive Office Building, Washington, DC 20503. Telephone - 202–395–3050.

SUPPLEMENTARY INFORMATION: Executive Order 12549 "Debarment and Suspension," was signed by President Reagan on February 18, 1986. Section 6 of the Order states that "The Director of the Office of Management and Budget is authorized to issue guidelines to Executive departments and agencies that govern which programs and activities are covered by this Order, prescribe governmentwide criteria and governmentwide minimum due process procedures, and set forth other related details for the effective administration of the guidelines."

As part of the Administration's initiatives to curb fraud, waste, and abuse, the President's Council on Integrity and Efficiency created an interagency task force to study the feasibility and desirability of a comprehensive debarment and suspension system encompassing the full range of Federal activities. The Task Force concluded, in its November 1982 report, that such a system was desirable and feasible.

As a result, the Office of Management and Budget (OMB) established an interagency Task Force on Nonprocurement Suspension and Debarment. The Task Force recommended, in its November 1984 report, that a governmentwide nonprocurement debarment and suspension system, similar to that currently in effect for procurement, be established. This could be the first step towards a comprehensive system, including both procurement and nonprocurement.

The proposed OMB guidelines cover the subjects indicated in Section 6 of Executive Order 12549, including: scope, governmentwide criteria, and minimum due process procedures. They are prepared in regulation format to facilitate their use by the executive departments and agencies in preparing agency regulations called for by Section 3 of the Order.

The Task Force on Nonprocurement Suspension and Debarment considered many issues in developing the proposed guidelines. It concluded that the system should be as compatible as possible with the procurement debarment and suspension system included in the Federal Acquisition Regulation (FAR), while fully addressing the needs and concerns of nonprocurement programs. As a result, the guidelines generally use the due process procedural structure of the FAR. Also, the proposed grounds for debarment and suspension are substantially similar to those in the FAR. The proposal combines the criteria common to the existing agency nonprocurement regulations with the criteria in the FAR.

The Task Force further concluded that each agency should issue its own regulations governing implementation of the Order, consistent with the OMB guidelines. This approach would facilitate, where possible, integration of the nonprocurement procedures into each agency's existing procurement system.

OMB and the interagency Task Force invite comments on all aspects of the proposed guidelines. In particular, comments are encouraged in the three areas described below: scope, nonperformance as criterion for governmentwide debarment, and access to the list of excluded parties.

Scope

A wide range of options was considered in determining the scope of the proposed nonprocurement debarment and suspension program. There are a number of factors related to both the breadth and depth of coverage which may be appropriate for comment. For each of these factors there is a variety of possible options, as illustrated on the following chart. The range of options presented is not all-inclusive. For each factor, the options represent points on a continuum; in most cases, other points could also have been selected. Generally, the factors are not interdependent; the choice of the option providing broad coverage (column C) for one factor does not dictate a similar choice for another factor.

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FACTORS	EXTENT OF COVERAGE		
	COLUMN A -- NARROW	COLUMN B -- MEDIUM	COLUMN C -- BROAD
1. What types of programs should be covered?	Direct Federal financial assistance (e.g., grants, cooperative agreements, loans, scholarships, fellowships, contracts of assistance).	All Column A programs plus other Federal assistance and indirect financial assistance (e.g., insurance, loans and loan guarantees placed by banks and intermediaries).	All Column A and Column B programs plus other nonprocurement activities, including technical assistance, technical services, Federal employment, licenses, permits, regulatory activities.
2. To what extent should lower tier subagreements be covered:			
a. Under discretionary programs?	No subagreement coverage.	Include all subagreements which require Federal approval or which involve substantive programmatic work.	Include all subagreements at any tier.
b. Under statutorily mandated (entitlement) awards?			
3. Should there be dollar thresholds for coverage?	Yes, cover only Federal award and subagreement transactions greater than $25,000 or a higher level.	Yes, cover only those greater than $10,000.	No, cover all Federal award and subagreement transactions regardless of dollar level.
4. To what extent should employees of assistance participants be covered?	Do not cover employment.	Cover "key" employees.	Cover all employees.
5. With regard to dollar thresholds and employment, what types of costs should be covered?	Direct charges only.	Direct charges only.	Direct as well as indirect (overhead) charges.

BILLING CODE 3110-01-C

The proposed scope embodied in the OMB guidelines represents the following choices on the chart:

1. Program coverage	Column B
2. Lower tier awards:	
a. Discretionary	Column C
b. Entitlement	Column C
3. Thresholds	Column C
4. Employees	Column B
5. Types of costs	Column B

Two other alternatives, representing the extremes of possible options, would be:

A. Only cover large Federal awards of grants and cooperative agreements. This option would represent the following choices:

1. Program coverage	Column A
2. Lower tier awards:	
a. Discretionary	Column A
b. Entitlement	Column A
3. Thresholds	Column A
4. Employees	Column A
5. Types of costs	Column A

B. Cover all Federal nonprocurement programs (except where prohibited by statute), all subtier agreements and expenditures whether or not the first tier awards were excluded, regardless of size or type of cost, and all personnel working in the program without regard to the nature of the position. This option would represent the following choices:

1. Program coverage	Column C
2. Lower tier awards:	
a. Discretionary	Column C
b. Entitlement	Column C
3. Thresholds	Column C
4. Employees	Column C
5. Types of costs	Column C

Nonperformance as Criterion for Governmentwide Debarment

The criteria proposed for a governmentwide debarment or suspension include willful or material failure to perform, similar to the FAR. Another option would be for actions based on willful or material nonperformance to be included on the governmentwide list but flagged so that each agency could determine whether that party should be excluded from its programs, i.e., not necessarily have governmentwide effect. This option is based on the belief of some that the area of acceptable performance under assistance is too subjective to impose a governmentwide debarment and suspension on the basis of a single agency's experience. Those who disagree with this criterion for governmentwide debarment raise the following question. Should a recipient or third party contractor who performs very well under one agency's assistance programs but poorly under the assistance programs of another agency be automatically debarred or suspended governmentwide? Those who agree with this criterion for governmentwide debarment believe willful, material or historical nonperformance anywhere should be controlling, as is the case for all other criteria for governmentwide debarment. Such nonperformance has long been a factor in procurement debarments.

Access to the List of Excluded Parties

The means of providing access to the consolidated list to recipients and lower tier participants to enable them to fulfill their obligations under the program is still undermined. There are a number of different approaches currently in use in the existing Federal assistance debarment programs and the Federal procurement debarment programs. These include, among others:

1. Periodic distribution of a hard copy of the list to an agency in each state for inquiry by other agencies, recipients and participants in the state.

2. Periodic distribution of a hard copy of the list to all recipients for their direct use (free or by paid subscription).

3. Federal agency retention of the list for inquiry by all its recipients and participants.

4. Maintenance of the list on a computer which can be dialed up by all recipients and participants, under funding arrangements with the awarding agency.

Access through an "800" telephone number(s) is a possible enhancement to these approaches.

In addition to these methods, more technologically advanced approaches have been suggested, such as automated, computer-voice response capability on an "800" number. A numerical identifier (e.g., Employer Identification Number (EIN)) for every party on the list would be needed and would have to be known to the inquiring recipient or participant.

Comments are invited on what means of access is regarded as minimally acceptable and what would be considered as most desirable.

Joseph R. Wright, Jr.,

Deputy Director.

DRAFT

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

Subject: Governmentwide Nonprocurement Debarment and Suspension System

On February 18, 1986, the President signed Executive Order 12549. The Order directs Federal executive branch departments and agencies to participate in a system for nonprocurement debarment and suspension under which an agency's debarment or suspension of a nonprocurement program participant will have governmentwide effect.

Pursuant to Section 6 of the Order, the attached OMB guidelines prescribe the scope, governmentwide criteria, minimum due process procedures, and other guidance for this system. The guidelines are prepared in regulation format to facilitate their use in preparing agency regulations.

Section 3 of the Order directs agencies to issue regulations to implement the system. Proposed agency regulations, which are to be consistent with these guidelines, should be submitted to OMB for review no later than four months from the date of this memorandum in accordance with Section 3 of the Order. Please submnit a copy after **Federal Register** publication to [lead agency, Attention:].

Further information regarding implementation of the Order may be obtained from the Grants Management staff, Financial Management Division, at 395–3050.

Deputy Director.

Attachment.

PART _____—GUIDELINES FOR GOVERNMENTWIDE NONPROCUREMENT DEBARMENT AND SUSPENSION

Subpart A—General

Sec.

____.100	Purpose.
____.105	Authority.
____.110	Scope.
____.115	Policy.
____.120	Definitions.

Subpart B—Effect of Action

____.200	Debarment or suspension.

Subpart A—General

§____.100 Purpose.

(a) These guidelines implement Section 6 of Executive Order 12549 by:

(1) Prescribing the nonprocurement programs and activities that are covered by the Order;

(2) Prescribing the governmentwide criteria and governmentwide minimum due process procedures that Federal agencies shall use in implementing the Order;

(3) Providing for the listing of debarred and suspended participants, participants who voluntarily exclude themselves from participation in assistance transactions, and participants declared ineligible (see the definition of "ineligible" in §____.120);

(4) Setting forth the consequences of the actions under paragraph (a)(3) of this section;

(5) Offering such other guidance as necessary for the effective implementation and administration of the Order.

(b) Although these guidelines cover the listing of ineligible participants and the effect of such listing, they do not prescribe policies and procedures governing declarations of ineligibility.

(c) The procedures set forth in §§____.310 and ____.410 are the minimum due process procedures which agencies must follow. However, agencies are free to supplement them in any way not inconsistent with those sections.

§____.105 Authority.

(a) These guidelines are issued pursuant to Executive Order 12549 of February 18, 1986.

§____.110 Scope.

(a) These guidelines apply to executive branch domestic assistance transactions described below.

(1) *Covered transactions.* Covered transactions (whether by a Federal agency, recipient, subrecipient, or intermediary) include, except as noted in paragraph (a)(3) of this section: grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements; subawards, subcontracts and transactions at any tier that are charged as direct costs, regardless of type (including subtier awards under awards which are statutory entitlement or mandatory awards); and specially covered activities identified in paragraph (a)(2) of this section.

(2) *Specially covered activities.* In addition to those transactions identified in paragraph (a)(1) of this section, participants in the loan, loan guarantee, and insurance programs of the Departments of Agriculture and Housing and Urban Development and of the Veterans Administration, and in the interstate land sales and manufactured housing programs of the Department of Housing and Urban Development, and those in business relationships with such participants to the extent of their connection with such programs, are also subject to the provisions of these guidelines, whether or not their participation involves the actual receipt of Federal funds.

(3) *Exceptions.* Statutory entitlement or mandatory awards (but not subtier awards thereunder which are not themselves mandatory), benefits to an individual as a personal entitlement without regard to the individual's present responsibility (but benefits received in an individual's business capacity are not excepted), incidental benefits derived from ordinary governmental operations, and other transactions where the application of Executive Order 12549 and these guidelines would be prohibited by law are not covered.

(b) *Relationship to Federal acquisition activities.* Executive Order 12549 and these guidelines do not apply to direct Federal acquisition activities. Debarment and suspension of Federal contractors and subcontractors are covered by the Federal Acquisition Regulation (FAR), 48 CFR Subpart 9.4. However, agencies are encouraged to integrate their administration of these complementary debarment and suspension programs.

§____.115 Policy.

(a) In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons. Debarment and suspension are discretionary actions that, taken in accordance with Executive Order 12549 and these guidelines, are appropriate means to effectuate this policy.

(b) Debarment and suspension are serious actions which shall be used only in the public interest and for the Federal Government's protection and not for purposes of punishment. Agencies may impose debarment or suspension for the causes and in accordance with the procedures set forth in these guidelines.

§____.120 Definitions.

Adequate evidence. Information sufficient to support the reasonable belief that a particular act or omission has occurred.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one owns, controls, or can control another or they are under common ownership or control of a third person.

Agency. Any executive department, military department or defense agency, or other agency of the executive branch, excluding the independent regulatory agencies.

Assistance transactions. Those covered executive branch domestic assistance transactions denoted by §____.110(a)(1) and (a)(2).

Consolidated List. A list compiled, maintained and distributed by [lead agency] containing the names and other information about participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

Control. The power to exercise, directly or indirectly, a controlling influence over the management, policies, or activities of a person, whether through the ownership of voting securities, through one or more intermediary persons, or otherwise. For purposes of actions under these guidelines, a person who owns or has the power to vote more than 25 percent of the outstanding voting securities of another person, or more than 25 percent of total equity if the other person has no voting securities, is presumed to control. Such presumption may be rebutted by evidence.

Conviction. A judgment of conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of nolo contendere.

Debarment. An action taken by a debarring official in accordance with agency regulations implementing Executive Order 12549 to exclude a person from participating in assistance

transactions. A person so excluded is "debarred."

Debarring official. An agency head or a designee authorized by the agency head to impose debarment.

Indictment. Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

Ineligible. Excluded from participation in Federal assistance transactions, programs or agreements pursuant to statutory, Executive order, or regulatory authority other than Executive Order 12549 and its agency implementing and supplementing regulations; for example, excluded pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the equal employment opportunity acts and Executive orders, or the environmental protection acts and Executive orders.

Legal proceedings. Any criminal proceeding or any civil judicial proceeding to which the Federal Government or a State or local government or quasi-governmental authority is a party. The term includes appeals from such proceedings.

Nonprocurement. Refers to activities of the Federal Government other than direct procurement of goods and services for the use of the Federal Government, including assistance transactions.

Notice. A written communication served in person or sent by certified mail, return receipt requested, or its equivalent, to the last known address of a party, its identified counsel, its agent for service of process, or any partner, officer, director, owner, or joint venturer. Notice, if undeliverable, shall be considered to have been received by the addressee five days after being properly sent to the last address known by the agency.

Participant. Any person who submits proposals for, receives an award or subaward or performs services in connection with, or reasonably may be expected to be awarded or to perform services in connection with, a Federal assistance transaction.This term also includes any person who conducts business with a Federal agency as an agent or representative of another participant.

Person. Any individual, corporation, partnership, association, unit of government or legal entity however organized, including any subsidiary of any of the foregoing.

Preponderance of the evidence. Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Proposal. A solicited or unsolicited bid, application, request, invitation to consider or similar communication by or on behalf of a person seeking a benefit under an assistance transaction, whether directly or indirectly.

Respondent. A person against whom a debarment or suspension action has been initiated.

Subsidiary. Any corporation, partnership, association or legal entity however organized, owned or controlled by another person.

Suspending official. An agency head or a designee authorized by the agency head to impose suspension.

Suspension. An action taken by a suspending official in accordance with agency regulations implementing Executive Order 12549 to immediately exclude a person from participating in assistance transactions for a temporary period, pending completion of an investigation and such legal or debarment proceedings as may ensure. A person so excluded is "suspended."

Voluntary exclusion. A status of nonparticipation or limited participation in assistance transactions assumed by a person pursuant to the terms of a settlement.

Subpart B—Effect of Action

§ ___.200 Debarment or suspension.

(a) Except to the extent prohibited by law, a person's debarment shall be effective throughout the executive branch of the Federal Government. Except as provided in § ___.215, persons who are debarred or suspended under these provisions are excluded from participation in all assistance transactions of all agencies for the period of their debarment or suspension. Accordingly, agencies and participants shall not make awards to or agree to participation by such debarred or suspended persons during such period.

(b) In addition, individuals who are debarred or suspended are excluded from participation in or under any assistance transaction in any of the following capacities: as an owner or partner holding a controlling interest, director, or officer of the participating person; as a principal investigator, project director, or other position involved in management of the assistance transaction; in any other position to the extent that the incumbent is responsible for the administration of Federal funds; or in any other position charged as a direct cost under an assistance transaction.

§ ___.205 Voluntary exclusion.

Participants who accept voluntary exclusions under § ___.320 are excluded in accordance with the terms of their settlements; their listing, pursuant to Subpart E, is for informational purposes. Awarding agencies and participants must contact the original action agency to ascertain the extent of the exclusion.

§ ___.210 Ineligible persons.

Persons who are ineligible are excluded in accordance with the applicable statutory, Executive order, or regulatory authority.

§ ___.215 Exception provision.

In ususual circumstances, an agency may grant an exception permitting a debarred, suspended, or excluded person to participate in a particular transaction upon a written determination by the agency head or authorized designee stating the compelling reason(s) for doing so.

§ ___.220 Continuation of current awards.

(a) Notwithstanding the debarment, suspension, voluntary exclusion or ineligible status of any person, agencies and participants may continue agreements in existence at the time the person was debarred, suspended, declared ineligible or voluntarily excluded. A decision as to the type of termination action, if any, to be taken should be made only after thorough review to ensure the propriety of the proposed action.

(b) Agencies and participants shall not renew or extend the duration of current agreements with any person who is debarred, suspended, declared ineligible or under a voluntary exclusion, except as provided in § ___.215.

§ ___.225 Failure to adhere to restrictions.

Doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known or reasonably should have been known that the person is debarred, suspended or otherwise excluded from participation in such transaction, except in accordance with these guidelines, may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies as appropriate.

Subpart C—Debarment

§ ___.300 General.

The debarring official may debar a participant for any of the causes in § ___.305, using procedures established in accordance with § ___.310. The existence of a cause for debarment, however, does not necessarily require that the participant be debarred; the seriousness of the participant's acts or omissions and any mitigating factors should be considered in making any debarment decision.

§ ___.305 Causes for debarment.

Debarment may be imposed in accordance with the provisions of §§ ___.300 and ___.310 for:

(a) Conviction of or civil judgment for any offense indicating a lack of business integrity or honesty which affects the present responsibility of a participant, including but not limited to:

(1) Fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement;

(2) Bribery, embezzlement, false claims, false statements, falsification or destruction of records, forgery, obstruction of justice, receiving stolen property, or theft; or

(3) Unlawful price fixing between competitors; allocation of customers between competitors, bid rigging, or any other violation of Federal or State antitrust laws that relates to the submission of bids or proposals.

(b) Violation of the terms of a public agreement so serious as to affect the present responsibility of a participant, including but not limited to:

(1) A willful or material failure to perform under one or more public agreements;

(2) A history of substantial noncompliance with the terms of one or more public agreements; or

(3) A willful or material violation of a statutory or regulatory provision or requirement applicable to a public agreement.

(c) Any of the following causes:

(1) Debarment or equivalent exclusionary action by any public agency or instrumentality for causes substantially the same as provided for by § ___.305;

(2) Doing business with a debarred, suspended or otherwise excluded person, in connection with an assistance transaction, where it is known or reasonably should have been known that the person in debarred, suspended of otherwise excluded from participation in such transactions;

(3) Conduct indicating a lack of business integrity or honesty which affects the present responsibility of a participant;

(4) Loss or denial of the right to do business or practice a profession under circumstances indicating a lack of business integrity or honesty or otherwise affecting the present responsibility of a participant;

(5) Failure to pay a debt (including disallowed costs and overpayments) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted; or

(6) Violation of a material provision of a voluntary exclusion or of any settlement of a debarment or suspension action.

(d) Any other cause of so serious or compelling a nature that it affects the present responsibility of a participant.

§ ___.310 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the debarring official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the debarment decisionmaking process that are as informal as practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of proposed debarment.* A debarment proceeding shall be initiated by notice to the respondent advising:

(i) That debarment is being considered;

(ii) Of the reasons for the proposed debarment in terms sufficient to put the respondent on notice of the conduct or transaction(s) upon which it is based;

(iii) Of the cause(s) relied upon under § ___.305 for proposing debarment;

(iv) Of the provisions of § ___.310(b)(1)–(b)(6) and the agency's specific procedures governing debarment decisionmaking;

(v) Of the effect of the proposed debarment pending a final debarment decision; and

(vi) Of the potential effect of a debarment.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of proposed debarment, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment.

(3) *Additional proceedings as to disputed material facts.* (i) In actions not based upon a conviction or judgment, if it is found that there exists a genuine dispute over facts material to the proposed debarment, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.

(ii) A transcribed record of any additional proceedings shall be made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Debarring official's decision.* (i) *No additional proceedings necessary.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarring official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the debarring official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The debarring official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The debarring official may refer matters involving disputed material facts to another official for findings of fact. The debarring official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The debarring official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Standard of evidence.* In any contested action, the cause for debarment must be established by a preponderance of the evidence. In any contested action in which the proposed debarment is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

(6) *Notice of debarring official's decision.*

(i) If the debarring official decides to impose debarment, the respondent shall be given prompt notice:

(A) Referring to the notice of proposed debarment;

(B) Specifying the reasons for debarment;

(C) Stating the period of debarment, including effective dates; and

(D) Advising that the debarment is effective for assistance transactions throughout the executive branch of the Federal Government unless an agency head or a designee authorized by an agency head makes the determination referred to in §____.215.

(ii) If the debarring official decides not to impose debarment, the respondent shall be given prompt notice of that decision. A decision not to impose debarment shall be without prejudice to a subsequent imposition of debarment by any other agency.

§____.315 Effect of proposed debarment.

Upon issuance of a notice of proposed debarment and until the final debarment decision is rendered, the debarring agency shall not make any new assistance awards to the respondent. That agency may waive this exclusion pending a debarment decision upon a written determination by the debarring official identifying the reasons for doing so. In the absence of such a waiver, the provisions of §____.215 allowing exceptions for particular transactions may be applied.

§____.320 Voluntary exclusion.

A participant and an agency may enter into a settlement providing for the exclusion of the participant. Such exclusion shall be entered on the Consolidated List (see Subpart E).

§____.325 Period of debarment.

(a) Debarment shall be for a period commensurate with the seriousness of the cause[s]. Generally, a debarment should not exceed three years. If a suspension precedes a debarment, the suspension period may be considered in determining the debarment period. Where circumstances warrant, a longer term of debarment may be imposed, up to an indefinite period.

(b) The debarring official may extend an existing debarment for an additional period, if that official determines that an extension is necessary to protect the public interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. If debarment for an additional period is determined to be necessary, the procedures of §____.310 shall be followed to extend the debarment.

(c) The debarring official may reduce the period or scope of debarment, upon the respondent's request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or judgment upon which the debarment was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the debarring official deems appropriate.

§____.330 Scope of debarment.

(a) *Scope in general.*

(1) Debarment of a person or affiliate under Executive Order 12549 constitutes debarment of all its subsidiaries, divisions, and other organizational elements unless the debarment decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of agreements.

(2) The debarment action may include any other affiliate of the participant that is—

(i) Specifically named and

(ii) Given notice of the proposed debarment and an opportunity to respond (see §____.310).

(b) *Imputing conduct.* For purposes of determining the scope of debarment, conduct may be imputed as follows:

(1) *Conduct imputed to participant.* The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with a participant may be imputed to the participant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the participant, or with the participant's knowledge, approval, or acquiescence. The participant's acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval, or acquiescene.

(2) *Conduct imputed to individuals associated with participant.* The fraudulent, criminal, or other seriously improper conduct of a participant may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the participant who participated in, knew of, or had reason to know of the participant's conduct.

(3) *Conduct of one participant imputed to other participants in a joint venture.* The fraudulent, criminal, or other seriously improper conduct of one participant in a joint venture or similar arrangement may be imputed to other participants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval, or acquiescence of these participants. Acceptance of the benefits derived from the conduct shall be presumptive evidence of such knowledge, approval or acquiescence.

Subpart D—Suspension

§____.400 General.

(a) The suspending official may suspend a participant for any of the causes in §____.405 using procedures established in accordance with §____.410.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence of one or more of the causes set out in §____.405 when it has been determined that immediate action is necessary to protect the public interest.

§____.405 Causes for suspension.

(a) Suspension may be imposed in accordance with the provisions of §§____.400 and ____.410 upon adequate evidence:

(1) To suspect the commission of an offense listed in §____.305 [a); or

(2) That a cause for debarment under §____.305 may exist.

(b) Indictment shall constitute adequate evidence for purposes of suspension actions.

§____.410 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall, at a minimum, provide the following:

(1) *Notice of suspension.* When a respondent is suspended, notice shall immediately be given:

(i) That suspension has been imposed;

(ii) That the suspension is based on an indictment, conviction, or other adequate evidence that the respondent has committed irregularities seriously reflecting on the propriety of further Federal Government dealings with the respondent;

(iii) Describing any such irregularities in terms sufficient to put the respondent on notice without disclosing the Federal Government's evidence;

(iv) Of the cause[s] relied upon under §____.405 for imposing suspension;

(v) That the suspension is for a temporary period pending the completion of an investigation and such legal or debarment proceedings as may ensue;

(vi) Of the provisions of § ____.410(b)(1)–(b)(5) agency's specific procedures governing suspension decision decisionmaking; and

(vii) Of the effect of the suspension.

(2) *Submission in opposition.* Within 30 days after receipt of the notice of suspension, the respondent may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(3) *Additional proceedings as to disputed material facts.*

(i) If it is found that there exists a genuine dispute over facts material to the suspension, respondent(s) shall be afforded an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents, unless—

(A) The action is based on an indictment, conviction or judgment, or (B) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Federal Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(ii) A transcribed record of any additional proceedings shall be prepared and made available at cost to the respondent, unless the respondent and the agency, by mutual agreement, waive the requirement for a transcript.

(4) *Suspending official's decision.* The suspending official may modify or terminate the suspension (for example, see § ____.325(c) for the reasons for reducing the period or scope of debarment) or may leave it in force. However, a decision to modify or terminate the suspension shall be without prejudice to the subsequent imposition of suspension by any other agency or debarment by any agency. The decision shall be rendered in accordance with the following provisions:

(i) *No additional proceedings necessary.* In actions (A) based on an indictment, conviction, or judgment, (B) in which there is no genuine dispute over material facts, or (C) in which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official shall make a decision on the basis of all the information in the administrative record, including any submission made by the respondent. The decision shall be made within 45 days after receipt of any information and argument submitted by the respondent, unless the suspending official extends this period for good cause.

(ii) *Additional proceedings necessary.* (A) In actions in which additional proceedings are necessary to determine disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the respondent and any other information in the administrative record.

(B) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

(C) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(5) *Notice of suspending official's decision.* Prompt written notice of the suspending official's decision shall be sent to the respondent and any affiliates involved.

§ ____.415 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal or debarment proceedings, unless terminated sooner by the suspending official or as provided in paragraph (b) of this section.

(b) If legal or debarment proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless an Assistant Attorney General requests its extension, in which case it may be extended for an additional six months. In no event may a suspension extend beyond 18 months, unless such proceedings have been initiated within that period.

(c) The suspending official shall notify the Department of Justice of an impending termination of a suspension, at least 30 days before the 12-month period expires, to give that Department an opportunity to request an extension.

§ ____.420 Scope of suspension.

The scope of a suspension shall be the same as the scope of a debarment (see § ____.330), except that the procedures of § ____.410 shall be used in imposing a suspension.

Subpart E—Consolidated List of Debarred, Suspended, Voluntarily Excluded, and Ineligible Participants

§ ____.500 [Lead agency] responsibility.

(a) [Lead agency] shall compile, maintain, and distribute a list of all participants who have been debarred, suspended, or voluntarily excluded under Executive Order 12549 and these guidelines, and those who have been determined to be ineligible.

(b) At a minimum, this list shall indicate:

(1) The names and addresses of all debarred, suspended, voluntarily excluded, and ineligible participants in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) The type of action;

(3) The cause for the action;

(4) The scope of the action;

(5) Any termination date for each listing; and

(6) The agency and name and telephone number of the agency point of contact for the action.

§ ____.505 Responsibilities of Federal agencies.

(a) Each agency shall designate a liaison who shall be responsible for providing [lead agency] with current information concerning debarments, suspensions, voluntary exclusions and ineligibilities taken by that agency. Until [three years from the date of Executive Order 12549], the liaison shall also provide [lead agency] and OMB with information concerning all transactions in which the agency has granted exceptions under § ____.215 permitting participation by debarred, suspended, or excluded persons.

(b) Unless an alternative schedule is agreed to by [lead agency], each agency shall advise [lead agency] of the information set forth in § ____.500(b) and of the exceptions granted under § ____.4[illegible] within five working days after taking such actions.

(c) Each agency shall establish procedures to provide for the effective dissemination and use of the list, in order to ensure that listed persons do not participate in any assistance transaction in a manner inconsistent with that person's listed status, except as otherwise provided in these guidelines.

(d) Each agency shall direct inquiries concerning listed persons to the agency that took the action.

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Part VI

Environmental Protection Agency

40 CFR Part 61

National Emissions Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings; Proposed Rule and Announcement of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL 2961-8]

National Emissions Standards for Hazardous Air Pollutants; Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule and Announcement of Public Hearing.

SUMMARY: This proposed standard considers alternative work practice standards for limiting radon-222 emissions from tailings at licensed uranium mill sites. EPA is taking the action because EPA has preliminarily concluded that radon-222 emissions from uranium mill tailings cause significant risks to nearby people and to populations. The proposed rule is intended to reduce these risks to levels that are protective of public health with an ample margin of safety.

DATES: A public hearing on the proposed rule will be held on February 27 and 28, 1986, in Denver, Colorado. Interested parties are invited to testify. Requests to participate in the hearing should be made in writing by February 25, 1986. Written statements and comments on the proposed rule may be entered into the record by March 31, 1986.

ADDRESSES: The hearing will be held at the Holiday Inn, 1450 Glenarm Place, Denver, Colorado, from 9:00 a.m. to 5:00 p.m. each day. Requests to participate in the hearing should be made in writing to Richard J. Guimond, Director, Criteria and Standards Division (ANR-460), U.S. Environmental Protection Agency, Washington, DC 20460. All requests should include an outline of the topics to be addressed in the opening statements and the names of the participants. Presentations should be limited to 30 minutes. Please indicate a preferred date for testimony.

Comments should be submitted to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, Washington, DC 20460, Attention: Docket No. A-79-11. The rulemaking docket, containing information used by EPA in developing the proposed standard, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Lobby, Gallery One, Waterside Mall, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Terrence A. McLaughlin, Chief, Environmental Standards Branch, Criteria and Standards Division (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460, (703) 557-8977.

SUPPLEMENTARY INFORMATION:

I. Supporting Documents

A draft background information document and a draft economic analysis have been prepared and are titled respectively "Draft Background Information Document—Proposed Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings" (EPA 520/1-86-001) and "Draft Economic Analysis—Proposed Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings" (EPA 520/1-86-002). Single copies of these documents may be obtained from the Program Management Office (ANR-458), Office of Radiation Programs, Environmental Protection Agency, Washington, DC 20460; (703) 557-9351.

The documents contain projections of radon-222 emissions and the resulting risks to nearby individuals and to populations due to the operation of the uranium milling industry, a description of radon-222 control technology and associated costs, and an environmental and economic analysis of the effects of alternative control strategies on the industry.

II. History of Standards Development

The Agency's standards for Nuclear Power Operation (40 CFR Part 190) issued under the Atomic Energy Act (42 FR 2858, January 13, 1977) limit the total individual radiation dose caused by emissions from facilities that make up the uranium fuel cyle, including licensed uranium mills. However, when 40 CFR Part 190 was promulgated, considerable uncertainty existed about the public health impact of existing levels of radon-222 in the air, as well as uncertainty about the best method for management of new man-made sourses of radon-222. EPA then exempted radon-222 from control since the problems associated with emissions of this radionuclide were sufficiently different from those of other radioactive materials associated with the fuel cycle to warrant separate consideration.

Control of radon-222 emissions from uranium mill tailings was later considered under the Uranium Mill Tailings Radiation Control Act (UMTRCA). EPA standards (50 CFR Part 192, subparts D and E) issued for the management of tailings at locations that are licensed by the NRC or the States under Title II of the UMTRCA, limit radon-222 emissions from mill tailings piles after closure of the facility (40 FR 45926; October 7, 1983). Included in these standards was an Agency commitment to issue an Advance Notice of Proposed Rulemaking under section 112 of the Clean Air Act to consider controlling radon-222 emissions from uranium mill tailings piles during the operational period of a mill. In 1977, Congress amended the Clean Air Act (the Act) to address airborne emissions of radioactive materials. The Administrator of EPA, after seeking public comment (44 FR 21704), April 11, 1979), then listed radionuclides as hazardous air pollutants under section 112 of the Act (44 FR 76738, December 27, 1979). EPA has promulgated emission standards for Department of Energy (DOE) facilities, NRC-licensed facilities and non-DOE Federal facilities, elemental phosphorus plants and underground uranium mines (50 FR 5190, February 6, 1985 and 50 FR 15386, April 17, 1985).

On October 31, 1984, EPA issued an Advance Notice of Proposed Rulemaking to inform interested parties that the Agency was considering issuing standards under the Clean Air Act to limit radon-222 emissions from licensed uranium mill tailings. (49 FR 43916, October 31, 1984). Subsequently, EPA entered into an agreement with the Sierra Club to promulgate such standards by May 1, 1986. This agreement was formalized as a Court stipulation by the United States District Court for the Northern District of California (Civil No. C-84-0656 WHO).

III. Comments Received in Response to the Advance Notice of Proposed Rulemaking

In its advance Notice of Proposed Rulemaking, the Agency requested information on:

(1) Radon-222 emissions from uranium mills;

(2) Applicable control options and strategies, including work practices;

(3) Feasibility and cost of control options and strategies;

(4) Local and regional impacts due to emissions of radon-222 for licensed uranium mills;

(5) Methods of determining compliance with a work practice type of standard; and

(6) Effect on the industry if controls are required.

Only the American Mining Congress responded to this request. It made three major points in its comments: (1) The Agency has no jurisdiction to issue standards that are effective within the boundaries of mill site locations or that

impose management, design or engineering requirements; (2) radon-222 emissions from tailings piles during the operational phase of uranium mills do not pose a significant risk of harm to public health or the environment; and (3) even if the potential risks from uncontrolled tailings could be characterized as significant, current Nuclear Regulatory Commission (NRC) standards and practices provide more than adequate protection to the public health and the environment.

The Agency considered these comments in the preparation of this proposed standard. In response to each point the Agency found:

(1) The 1977 Clean Air Act amendments give EPA and the States authority to regulate all airborne emissions of radioactive materials, including those occurring within site boundaries;

(2) The lifetime risk of lung cancer to a person living near a uranium mill is about one chance in one hundred and, even if a person lives near a pile only a few years, the risk is still significant; and

(3) Existing NRC standards and practices allow a lifetime risk of greater than one in one hundred to individuals living near the largest tailings piles. The number of fatal cancers each year to the U.S. population from all existing licensed piles is estimated to be between 3 and 6, depending on the condition of piles. Consequently, the Agency does not consider existing standards and practices to be sufficiently protective of public health.

The Agency preliminarily concluded that development of the standard should continue.

IV. Basic Terms Used in this Notice

Definitions of basic terms used in this notice are given below:

1. *Radon-222*—An inert radioactive gas.

2. *Radon-222 decay products*—The seven principal radionuclides that are produced as radon-222 decays to nonradioactive lead. Radon-222 short-lived decay products means the four radionuclides produced as radon-222 decays to lead-210.

3. *Mill tailings*—The waste resulting from conventional milling of uranium ore. Tailings are classified as either sands or slimes depending on size. Processing one ton of ore produces approximately one ton of tailings.

4. *Tailings pile*—The on-site waste impoundment in which tailings are deposited.

5. *Single cell disposal*—A method of tailings management which uses a large impoundment designed to contain all tailings generated during the lifetime of the mill. At the end of the mill life the impoundment is actively dewatered by means of pumps or allowed to air dry and then is immediately reclaimed.

6. *Phased disposal*—A method of tailings management and disposal which uses a series of small impoundments. Tailings are pumped to one impoundment until it is filled and then pumped to the next impoundment. The filled impoundment is dried, or allowed to dry naturally, and then immediately reclaimed.

7. *Continuous disposal*—A method of tailings management and disposal in which tailings are dewatered by mechanical methods soon after generation. The dried tailings are then placed in trenches or other disposal areas and immediately reclaimed.

8. *Covered or reclaimed*—Disposal of tailings to specifications required by 40 CFR Part 192 (UMTRCA).

9. *ALARA*—A practice in radiation protection which encourages that radionuclide emissions be kept "as low as reasonably achievable."

V. Summary of Proposed Standard

Based on currently available information, EPA has determined that it is not feasible to prescribe an emission standard for radon-222 emissions from uranium mills. Therefore, the Agency is proposing a work practice standard to limit radon-222 emissions from licensed uranium mills.

EPA is presenting three work practices, including improved methods of disposal for newly generated tailings, various timing requirements for use of these improved methods, and interim covers. The improved methods of disposal are a large single pile with immediate closure, phased disposal, and continuous disposal involving dewatering and covering of tailings. In addition EPA is considering alternatives allowing new tailings to be added to existing piles over a range of times, including 5 years, 10 years, 15 years and an indefinite period into the future. Costs and benefits are presented in supporting documents to assist those who wish to comment on a specific alternative. Multiple alternatives are proposed for public comment due to the Agency's desire to maximize information received through the public comment period before making a final decision.

In those cases where the Agency would ban the addition of tailings to a pile at a specified future date, the Agency would provide an exemption for existing tailings impoundments which are lined. However, any exemption must be approved by the Administrator. These lined impoundments are capable, in many cases, of maintaining a water cover over most of the tailings to control radon-222 emissions.

VI. Rationale for the Proposed Standard

A. Industry Description

Uranium milling involves the handling of large quantities of ore containing uranium and its decay products. The concentration of uranium and its decay products is about one thousand times greater in ore than in other rocks and soils. Conventional uranium milling involves the recovery of the uranium content of the ore by mechanical and chemical processes that generate waste tailings. The ore is first crushed, blended, and ground to the proper size for the leaching process which extracts uranium. Several leaching processes are used, including acid, alkaline, and a combination of the two. After uranium is leached from the ore, it is concentrated from the leachate through ion exchange or solvent extraction. The concentrated uranium is then stripped or extracted from the concentrating medium, precipitated, dried, and packaged. The depleted ore, in the form of tailings, is pumped to a tailings pile as a slurry mixed with water.

Since ore generally contains less than 0.5 percent uranium by weight, every ton of ore processed results in almost a ton of tailings. The tailings contain virtually all of the uranium decay products present in the ore, including thorium-230 and radium-226, which decay to radon-222. Previous risk analyses have shown that radon-222 is the most significant radionuclide released to air at uranium mills, and that the tailings pile is the most significant source of radon-222. [See draft Background Information Document—Proposed Standard for Radon-222 Emissions from Licensed Uranium Mill Tailings (EPA 520/1–86–001).]

The 26 licensed uranium mills in the United States are located in Colorado, New Mexico, South Dakota, Texas, Utah, Washington, and Wyoming. In addition, four mills have been licensed but not built, and one unconventional mill has had its license suspended. The milling industry is depressed due to a decline in the demand for uranium and competition from low-cost foreign sources. Three mills are actively processing ore; 17 are on standby and could process ore in the future if market conditions improve; six are being decommissioned and will no longer process ore. The 20 licensed mills that are actively processing ore or are on standby were considered in the

analyses reported in the supporting documentation. These 20 mills have about 35 tailings impoundments associated with them.

Past milling activities have generated about 175 million tons of tailings. Production at conventional mills peaked in 1980, when 21 mills recovered more than 17 thousand tons of uranium and generated more than 14 million tons of tailings. The industry is currently operating at less than 10 percent of capacity due to the depressed market. At this level of production, the industry is recovering about 1.8 thousand tons of uranium and generating about 1.4 million tons of new tailings annually. At full capacity, the industry could generate approximately 14 million tons of tailings a year.

B. Estimates of Exposure and Risk

Exposure estimates are based solely on radon-222 emissions from the tailings piles since emissions and risks from other parts of a uranium mill are small in comparison. Radon-222 emission rate estimates are based on the radium-226 concentration in the tailings using the relationships: One picocurie of radon-222 per square meter-second to one picocurie of radium-226 per gram of tailings. It is assumed that the radium-226 is evenly mixed throughout the tailings and that radon-222 is emitted from all exposed surfaces of tailings. The radium-226 content of the tailings is derived from the relationship: one-tenth of one percent of uranium in ore equals 280 picocuries of radium-226 per gram of ore.

Standard meteorological transport models are used to estimate radon-222 concentrations in air at various distances from the piles. Exposure to radon-222 decay products is then estimated from the radon-222 concentration in air. The final risk estimates are a product of the units of radon-222 decay product exposure levels and a risk factor that relates risk to a single unit of exposure.

Two summary measures are of particular interest: "nearby individual risk" and "total population impact." The former refers to the estimated increased lifetime risk to individuals who spend their entire life at the point where predicted concentrations of the pollutant are highest. Nearby individual risk is expressed as a probability; a risk of one in one thousand, for example, means that a person spending his lifetime at the point of maximum exposure has an estimated increased risk of developing a fatal cancer of one in one thousand. Estimates of nearby individual risk are upper bound estimates and must be interpreted cautiously.

The second measure, "total population impact," considers people exposed at all concentrations, low as well as high, and it considers people exposed throughout the United States, as appropriate. It is expressed in terms of annual number of cancer cases, and provides a measure of the overall impact on public health. A total population impact of 0.5 fatal cancer cases per year, for example, means that emissions of the specific pollutant are expected to cause one case of cancer every two years. At distance from a source, risks to specific persons are extremely small, but considering the total population exposed, the sums of these risks may be significant.

The two estimates together provide a better description of the magnitude and distribution of risk in a community than either number alone. "Nearby individual risk" tells us the highest risk, but not how many people may bear that risk. "Total population impact" describes the overall health impact on the entire exposed population, but not how much risk the most exposed persons may bear. Two sources of radionuclide or chemical emissions could have similar population impacts, but very different maximum individual risks, or vice versa. Both estimates are important and are used in making risk management decisions. The risk estimates should not be viewed as precise estimates of likely health damage, but rather as a general indication of a reasonable upper-limit estimate.

EPA's analysis of risks due to radon-222 emissions from existing uranium tailings piles concluded:

(a) Lung cancer caused by the short-lived decay products of radon-222 is the dominant radiation hazard from tailings. Estimated effects of gamma radiation and of long-lived decay products of radon-222 are less significant, although high gamma radiation exposures may sometimes occur.

(b) Individuals living near an uncontrolled tailings pile are subject to high risks due to radon-222 emitted from tailings. Radon-222 contained in the outside air enters homes and other structures built near the mill through doors and windows, as well as other openings in the structure. The resulting radon-222 decay products tend to concentrate indoors, thus exposing the occupants to potentially harmful levels of these radionuclides. It is estimated that persons living continuously next to some tailing sites can have lifetime lung cancer risks as high as about one in a hundred due to the radon-222 emissions from the tailings.

(c) Based on models for the risk to all exposed populations (local, regional, and national), about one to three fatal cancers per year are estimated from emissions of radon-222 from tailings at the 20 mill sites being considered here, if no controls are present. If the tailings at all sites were to dry out completely, this detriment is estimated to be about two to six fatal cancers per year. Approximately one-half of these deaths are estimated to occur within 80 kilometers of the tailings piles.

There is substantial uncertainty in these estimates because of uncertainties in the emission rates of radon–222 from tailings sites, the exposure people will receive from it decay products, and from incomplete knowledge of the effects on people due to these exposures. The values presented here represent best estimates based on current knowledge. Additionally, these estimates are based on current (1980 and 1983) pile sizes and geographical distributions of populations. As populations increase in the future, the estimated impacts will be larger.

Several factors suggest that actual exposure levels to nearby individuals will be lower than those estimated. In estimating exposure, the most exposed individuals are hypothetically subjected to the maximum annual average concentration of the emissions for 24 hours every day for 70 years (roughly a lifetime). This does not consider, for instance, the fact that most people in their daily routines move in and out of the specific areas where the radon–222 decay product concentrations are the highest or that tailings may be reclaimed before a lifetime exposure occurs.

Much more is known about the risks from exposure to radiation than exposure to most chemicals. While there is uncertainty in risk estimates from assessments of chemical emissions and radionuclide emissions, there is likely to be much less uncertainty in estimates of risk from radionuclide emissions because of the extensive data base on human exposure to radiation. Therefore, a risk estimate of one in one thousand resulting from exposure to radionuclides is likely to be more accurate than the same estimate for chemical exposures. Estimates of risk from radionuclides are much less likely to exaggerate hypothetical maximum risks than are estimates made for chemical exposure.

C. Control Technology

Water is very effective in controlling radon–222 emissions. It is estimated that saturated tailings and tailings covered with a thin layer of water emit only two percent of the radon–222 emitted by dry tailings. Deeper water covers (greater

than about 1 meter) effectively eliminate radon–222 emissions.

For most existing piles, radon–222 control using a water cover is not viable because keeping the tailings saturated or covered with water causes serious ground water contamination at most locations. Also, some tailings piles' retention dikes were not designed to retain water since they lack clay cores. However, if impermeable liners are placed on the sides and bottom of tailings impoundments, water cannot easily escape. Thus, ground water resources are protected and the pile can successfully be covered with water to prevent emissions of radon–222. Only five of the 35 existing impoundments considered in developing this rule have synthetic liners.

Earthen covers are also effective in controlling radon–222 if they are thick enough. It is estimated that one third meter of earthen material reduces radon–222 emissions by about 20 percent, one meter by about 65 percent and three meters about 95 percent, on the average. The amount of moisture held in this material determines its effectiveness in delaying the movement of radon–222. Since clay material (fine size particles) retain moisture much better than sandy materials (larger size particles), clays are more effective in controlling radon–222 than sands. The major problem with earthen covers when used on an interim basis is that their retention value is negated once additional tailings are placed on top of them, as frequently occurs at an operating mill. However, earthen covers should be effective on an interim basis when covering those portions of a pile that will not be used for extended periods.

Federal standards for disposal (reclamation) of tailings piles (40 CFR Part 192 and 10 CFR Part 40) require that disposal methods be designed so that radon–222 emissions do not exceed 20 pico-curies per square meter-second averaged over the entire tailings area for one thousand years. The Agency expects this to be accomplished in most cases by grading the tailings to gentle slopes, placing a cover of about three meters of earthen material over the tailings, and fortifying this cover with rock (rip rap) and gravel to last a long time. In a few existing cases, additional stabilization may be needed to assure long-term protection against flooding. The licensing agencies (NRC and the States) will approve disposal plans and the timing of reclamation. Currently, no licensed tailings impoundments have been disposed of.

The Agency reviewed various options for controlling radon–222 emissions from currently licensed piles. It was concluded that two options were available. First, earthen covers could be placed over dry tailings beaches and over embankments constructed of sand tailings. Dry beaches typically cover 60% of the total tailings area during the operating phase of a mill and may cover significantly larger areas during periods of extended shutdown. Twelve tailings piles constructed early in the industry's history have sand tailings embankments which, if covered with earth, would have reduced radon–222 emissions. Water covers were judged impractical unless the pile has an impermeable liner. Where there is a liner, piles tend to remain saturated with water and radon–222 emissions are greatly reduced.

Second, use of existing tailings piles could be terminated. The pile would then be disposed of expeditiously, following dry out. Newly generated tailings would then be managed by one of the three methods discussed below. It is estimated that radon-222 emissions are about 7,000 curies per year for an average site under typical operating conditions. Emissions would increase to about 12,000 curies per year when the piles dry out. Disposal of the tailings to Federal standards would reduce emissions to about 440 curies per year. Different termination times were considered as options in estimating the residual risk.

The Agency reviewed technologies that would reduce radon-222 emissions during the operating phase of a new uranium mill tailings pile. Three methods were selected for analysis: single cell impoundment; phased disposal; and continuous disposal.

Single cell impoundment

Using this method of disposal, a large impoundment would be constructed of earthen materials with clay cores and an impermeable liner. This impoundment would cover about 120 acres and have capacity to store all tailing generated during the life of the mill. [Previous NRC and EPA analyses assume the lifetime of the average uranium mill to be 15 years.] This design permits the impoundment to retain water without contaminating ground water.

During the operating life of the mill, the tailings would be covered with water thus minimizing radon-222 emissions. During the five-year dry out period necessary to allow final reclamation, the Agency estimates radon-222 emissions would gradually increase until they were similar to emissions from existing dry piles. Once the pile was dry, disposal to Federal standards would be performed immediately.

The Agency estimates radon-222 emissions would be about 800 curies per year during the operational period of the mill and about 2,500 curies per year during the dry out period for a total of 24,000 curies over the lifetime of the pile. If the tailings were not covered, emissions would be about 4,200 curies per year. Emissions would be about 300 curies per year, once the pile has been disposed of in accordance with existing Federal standards.

Phased Disposal

In this disposal scheme, series of small impoundments would be constructed over the lifetime of the mill. Each small impoundment would be constructed with clay-core earthen dikes or in an excavated pit and would have an impermeable liner. As each impoundment filled it would be dried out and covered with earthen materials immediately. The total area of all impoundments would be about 120 acres at the end of the average mill's lifetime. The design permits the use of a water cover over all tailings without the risk of contaminating ground water. It also greatly reduces the amount of unreclaimed tailings at the end of mill's lifetime because only one or two small impoundments would still require closure.

Radon-222 emissions are estimated to average about 700 curies per year over the lifetime (15 years use and 5 years dry out) of the mill; total emissions would be about 14,000 curies of radon-222.

Continuous Disposal

This disposal method calls for tailings to be dewatered as they are generated, placed in pits or on pads, and covered with about three meters of earthen materials on a continuous basis. Disposal pits or pads would be constructed with impermeable liners. This method would rely on the thick earthen cover to reduce radon-222 emissions, rather than water as in the previous two methods. The total area having covered tailings at the end of a mill's lifetime would be limited to about 120 acres. Since this method does not rely on water to reduce emissions of radon-222, the potential for ground water contamination is negligible.

The Agency estimates that only about ten acres of tailings would not be covered at any given time during operations. This method would have an average emission rate of about 500 curies per year for a total lifetime emission of about 10,000 curies.

D. The Proposed Standard

EPA is proposing a number of work practice standards for radon-222 emissions from licensed uranium mill tailings. Based on currently available information, EPA believes that it is not feasible to prescribe an emissions standard since most of the radon-222 emitted by a uranium mill comes mainly from the surface of mill tailings piles. A typical pile may be hundreds of acres in area and emissions from its surface cannot be controlled through a conveyance designed and constructed to emit or capture radon-222. EPA, however, requests comments specifically on whether an emission standard or standards for some tailings piles is appropriate in some circumstances. For instance, is an emission standard appropriate in the case of existing piles that are on standby for long periods?

The Agency has drafted a proposed rule that encompasses a range of alternative work practices considered feasible to control radon-222 emissions from uranium mill tailings.

The proposed rule displays, in the format of a rule, the alternatives considered. The Agency believes that the best way to explain these alternatives is to pose a series of questions with alternative answers followed by a discussion.

1. New Tailings Management

Should uranium mill tailings generated in the future be managed differently than in the past? If so, what improved methods should be used? The three alternatives considered are the single cell impoundment, phased disposal, and continuous disposal.

It is clear that past practices using unlined impoundments with dams made of mill tailings will not be allowed in the future due to other existing EPA and NRC requirements. However, there remains considerable licensed capacity in existing impoundments, many of which are unlined. Some have dams made of tailings.

The Agency estimated the costs and benefits of the alternatives based on a scenario that describes how the industry might operate over the next 100 years. A base situation was used for comparison that assumed single large impoundments were constructed, operated for 15 years, dried for 5 years and then remained on standby uncovered for an additional 40 years. The number of new single large impoundments required was estimated using a scenario for yellowcake demand based primarily on the Department of Energy's low growth projections for the nuclear power industry with reasonable assumptions made as to the amount of uranium required to be produced by uranium mills located in the United States. These estimates cannot be made precise due to the numerous assumptions necessary to make distant future projections.

The continuous method of disposal is the alternative that avoids the most fatal cancers (about 276) in the industry scenario selected, but is the most uncertain alternative because it has never been carried out in practice. However, this method has been licensed for use by State regulatory agencies and NRC requires its consideration. The assumption that 10 acres of dry tailings are exposed at one time, the efficiency and reliability of dewatering equipment and the costs of this alternative are quite uncertain. However, this alternative may be the most protective of groundwater, which is a very serious problem with some existing systems.

Phased disposal is intermediate in avoiding fatal cancers (about 268), appears to be the least costly and is the latest technology licensed by the NRC and Agreement States that has been used by industry. The Agency considered a series of 20-acre impoundments for analysis which is somewhat smaller than those phased systems now in use.

The single large impoundment is the least protective of public health (about 251 fatal cancers avoided) and between the others in cost. The practicality of maintaining the integrity of the liner in a large pond for 15 years (as opposed to 3 years for each cell of the phased disposal) is uncertain. Failures in liners for both this alternative method and the phased disposal alternative (to a lesser degree) can lead to groundwater contamination and costly measures to mitigate such groundwater contamination. Such costs were not considered quantitatively in the Agency's analyses.

2. Timing of New Tailings Management by an Improved Method

Should mill operators be required to begin managing new tailings by an improved method? As alternatives EPA is considering requiring mill operators to manage new tailings with improved methods immediately, in five years (a three-year requirement plus a potential waiver of compliance for two additional years), in ten years (eight plus two), in fifteen years (thirteen plus two) and no specific timing requirement (existing piles would be closed at the end of their useful life).

The Agency estimated the costs and benefits of the timing alternatives with respect to existing piles by comparing them to a base situation which assumed that existing piles reached the end of their useful lives over the next 15 years, then dried out over the next 5 years and remained unreclaimed for the next 40 years. This condition is considered conservative, but could arise if existing mills and, thus their tailings, are kept on standby on and off for extended periods as has happened in the past, since operators have a strong economic incentive to delay reclamation.

The costs attributed to an alternative are due to actions being required sooner in time than might ordinarily have occurred (i.e., the opportunity value of the money required to cover piles that might not have been required for about 40 years later), the costs of replacement impoundments for the capacity of the existing piles that could no longer be used, and costs of interim covers when considered. Costs of remedial actions required when groundwater is contaminated were not estimated.

As might be expected, as the time for managing the new tailings by a new method is extended, less public health protection is afforded. If an immediate change to a new method is made, then about 177 fatal cancers would be averted. In a five-year time frame about 158 would be avoided, about 140 for 10 years, and about 121 for 15 years. Also, the present value costs decrease as the time is extended. The costs involve a component for replacing lost pile capacity (to the extent that capacity is projected to be used before reclamation) and a component for disposal of the tailings pile earlier than would normally be done.

There may also be important implications for groundwater contamination. Management of tailings piles under improved methods will require opening piles at new locations. What are the groundwater implications of this requirement? What are other environmental implications of opening other tailings piles? At the same time, the Agency is concerned that groundwater contamination could be exacerbated by any extended use of the existing unlined tailings impoundments. It is estimated that 95% of the groundwater contamination is caused by seepage of water used to pump tailings to the pile during mill operation. At every mill tailings site studied for potential groundwater contamination such contamination has been found. The earliest practical time to design, license by the Nuclear Regulatory Commission and build a new lined tailings impoundment is approximately three years and perhaps longer if extensive NEPA review is required. We

specifically request comment on the groundwater issue.

3. Interim Earth Cover of Existing Tailings

Should an immediate interim earth cover be used to decrease radon–222 emissions at existing piles until final cover at disposal? If so, how much? The Agency has considered: (1) One-third meter of earth cover on the top, dry portions of existing piles with no requirement to shift to new tailings management techniques; (2) one meter of earth cover on the top, dry areas and sides (if sides are constructed of tailings) of existing piles with no requirement to shift to new tailings management techniques; and (3) interim cover of one meter as in (2) above but with newly generated tailings being managed by a new technology in fifteen years, ten years, five years, and at promulgation.

The Agency estimated the costs and benefits of these alternatives with respect to existing piles in a fashion equivalent to the anlysis for the required use of new management methods for newly generated tailings. For those cases where no requirement for improved management methods for new tailings was specified, a five-year dry out and forty years lag to disposal were assumed. The assumed time lag to disposal may be a conservative assumption, but there are some very old piles in existence and there is considerable economic incentive for owners to delay final disposal. If capacity remains for an existing pile, an owner avoids economic loss by remaining open. Also, postponing final closure costs reduces present value costs of closure.

The number of fatal cancers avoided for each of the alternatives increase in order of the alternative given; from about 30 deaths avoided for one-third meter of earth cover, about 114 avoided deaths for one meter of cover, about 159 avoided deaths for one meter of cover and requirement of 15 years to improve management methods, about 166 avoided deaths for one meter and a 10-year requirement, about 174 avoided deaths for one meter and a 5-year requirement, and about 182 avoided deaths for one meter and immediate new tailings management by improved methods.

As would be expected, costs rise with, but not in proportion to, the rise in fatal cancers avoided. The alternatives with an application of a single interim cover can be more costly than those without. If the pile is used to manage new tailings, then multiple interim covers are required, raising costs and lowering benefits.

A number of concerns and uncertainties arise from the consideration of interim earth cover. The interim cover would have to be immediate to be effective, coverage of steep tailings dams may not be practical, there may be extensive maintenance requirements, and such requirements may prove difficult to implement and enforce.

The use of an interim cover implies that *all* existing piles would have to place earth cover immediately (perhaps with a waiver of compliance for two years). The immediate cost to industry is $34 to $110 million, the value of which would probably be lost when final disposal takes place. This is because most piles should be recontoured before final cover is added. In addition, interim covers on the tops of piles could be lost if the pile is reactivated.

The use of interim cover for control of radon–222 has not been practiced. There are concerns regarding the difficulties of covering steep tailings slopes and the expected need for frequent inspection and repair of erosions caused by wind and water.

EPA would have to enter into an agreement with the NRC in order to avoid inconsistent duplication of requirements for NRC licensees. NRC requires cover for different purposes such as prevention of wind blown tailings to meet 40 CFR Part 190 or heavier earth covers to compress the tailings and thus dewater. Also, for NRC Agreement States that license such sites under their own laws, the Agency would have to decide if the States' rules were compatible with EPA's. Thus, there is the potential for unnecessary duplication of regulation and inspection. For the final rule, EPA will estimate the effects of current NRC requirements.

4. Selection of a Final Rule

The Agency has arrayed the alternatives in Tables 1 and 2, in which is presented the basic information on benefits and costs for each alternative and combinations of alternatives. Additional details may be found in the economic assessment produced during the development of this rule. In selecting the final rule, EPA will consider risks, feasibility, and cost.

Additionally, an extremely important consideration is the risk to individuals living near tailings piles. A survey conducted in 1983 found a small number of occupied dwellings within two kilometers of existing tailings piles. For current conditions of partial water cover on the piles, individual maximum lifetime risks are estimated to be as high as one in one hundred with the potential to two in one hundred if the piles were allowed to completely dry out. If interim covers were placed on the dry portions of the piles as they currently exist, a one-third meter cover could reduce the maximum individual risks to about eight in one thousand; a one meter cover to about four in one thousand; and final cover of approximately three meters to about five in ten thousand. Only a few piles actually expose people to such risks. Most tailing piles are in remote areas.

Another consideration is the impact of this rule on groundwater protection. Contamination of groundwater has been discovered at sites that have been investigated for contamination and there is no reason to believe that such contamination does not exist at all tailing piles that are unlined. Radionuclides, selenium arsenic, sulfate, molybdenum, and other contaminants have been found. Remedial actions have been taken at some sites by drilling wells to interdict groundwater and pump it back to the pond. In one case city water was provided to about 200 people and the use of wells stopped.

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Table 1

Benefits and Costs of
Alternative Work Practices - Interim Cover Not Included (a)

Alternative	Population Benefit		Other Benefits	Present Value of Costs ($ Million)		Annualized Cost ($ Million)	
	Deaths Avoided	Time Span (years)		5% Discount	10% Discount	5% Discount	10% Discount
Work practices for existing piles - Cease placing tailings on piles at:							
15 years	120	60	Increasing protection of ground water depending on time.	179	89	9.4	9.0
10 years	140	60		280	170	14.8	17.0
5 years	158	60		424	311	22.4	31.2
Promulgation	177	60		608	538	32.1	54.0
Work practices for new piles:							
Single large pile	251	100	No large tailings pile to reclaim.	25.6	3.4	1.3	0.3
Phased disposal	268	100		22.2	-13.4	1.1	-1.3
Continuous disposal	276	100		94.8	8.3	4.8	0.8

(a) Numbers are given in three significant figures for comparison purposes only.

Table 2

Benefits and Costs of
Alternative Work Practices - Interim Cover Included (a)

Alternative	Population Benefit		Other Benefits	Present Value of Costs ($ Million)		Annualized Cost ($ Million)	
	Deaths Avoided	Time Span (years)		5% Discount	10% Discount	5% Discount	10% Discount
Work practices for existing piles - Cease placing tailings on piles at:							
Not specified - 1 foot cover	30	60	Increasing protection of ground water depending on time.	34	28	1.8	2.8
Not specified - 1 meter cover	114	60		110	90	5.8	9.0
15 years - 1 meter cover	159	60		283	177	15.0	17.8
10 years - 1 meter cover	166	60		380	256	20.1	25.6
5 years - 1 meter cover	174	60		523	396	27.6	39.7
Promulgation - 1 meter cover	182	60		640	570	33.8	57.2

(a) Interim covers placed as soon as possible. Numbers are given in three significant figures for comparison purposes only.

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E. Request for Comments

EPA is particularly interested in receiving comments and recommendations on the following issues:

1. Is it feasible to dewater (or dry) tailings, as would be required under the continuous disposal alternative? What percent of water by volume can be removed from the associated waste? To the Agency's knowledge, dewatering large volumes of uranium mill wastes is unproven technology. The Agency specifically requests information related to tailings dewatering from pilot plants, laboratory experiments, or other feasibility studies.

2. What is the minimum period for the design, licensing, and construction of new tailings management processes? The Agency considers a three-year period reasonable, based on two years for the design and licensing phase and one year for construction. The views of the regulatory agencies (NRC and the States) are of interest to the Agency, particularly the experience gained in previous licensing actions.

3. Is the size limit of 20 acres for the phased disposal method reasonable? This limit was selected from previous NRC and EPA analyses. The assessment presented in the Background Information Document indicates this limit provides significant radon–222 control without a cost penalty. The Agency is particularly interested in any studies that support a different maximum size for this phased disposal method.

4. Are current levels or potential increases in levels of radionuclide or other contaminants in ground water around uranium mills sufficiently elevated to warrant immediate termination of pumping tailings into unlined impoundments? Ground water contamination is occurring at all tailings sites where groundwater has been evaluated and the existing impoundment has no liner. The most effective long-term solution to this problem, other than pumping and treatment, is to stop placing tailings into unlined impoundments. The Agency requests more information on concentration levels of hazardous constituents in ground water around uranium mills and the potential public health and environmental effects. Also, information is needed on the impact on the uranium industry if this action is taken.

5. Are there any unidentified public health or environmental problems with evaporation ponds? Both the phased disposal and continuous disposal methods require evaporation ponds to dispose of excess water. The Agency believes most existing evaporation ponds have synthetic liners to prevent infiltration of hazardous constituents into ground water. However, some of these ponds may contain significant quantities of tailings, which are likely to be carried over from the impoundment area. The Agency seeks any information that may be pertinent to the potential public health and environmental impact from evaporation ponds at uranium milling sites.

6. Are interim controls for tailings piles a practical alternative? In particular, can dikes made of tailings sands be successfully covered on an interim basis? If so, are there maintenance problems? If not, what risks would result if they remain uncovered? Also, are dry tailings beach areas frequently flooded with additional tailings, or does a dry beach tend to remain dry until the end of impoundment design capacity? The Agency believes a variety of tailings management practices are conducted, so that in some cases interim controls would be effective for only a few years while in other cases interim controls would be effective until closure. Any information that pertains to the effectiveness of interim controls or engineering and maintenance problems is requested.

7. EPA's assessment of the costs and benefits associated with the enactment of UMTRCA assumed that existing piles would be promptly closed and covered when they are no longer of use. However, for the analysis of the costs and benefits of the various regulatory alternatives for licensed uranium mill tailings piles, the Agency has altered this assumption to reflect a 40 year lag before existing piles, once they are no longer used, are covered with the final covers prescribed by UMTRCA. Furthermore, the Agency has assumed in its analysis of the various regulatory options for licensed uranium mill tailings piles that if these regulations prevent further use of existing tailings piles, those existing piles will be promptly covered with the final covers prescribed by UMTRCA. The opportunity costs and the reductions in health effects which result from the moving forward in time of the application of UMTRCA final covers are significantly large contributors to the costs and benefits, respectively, of the various regulatory options. Therefore the specific assumptions made concerning the likely promptness of UMTRCA compliance under various regulatory scenarios may strongly influence the estimated costs and benefits of the regulatory options.

The Agency seeks comments on two questions: Is it reasonable to assume, as a reference case condition, a 40 year lag before compliance with UMTRCA once an existing pile is no longer used? Is it reasonable to assume that once existing piles are no longer used they will be promptly covered with the final covers prescribed by UMTRCA?

8. Tables 1 and 2 show the costs and risk reductions associated with ceasing to place tailings in existing piles at different points in time. The risk reductions of the alternative options for ceasing to place tailings on existing piles reflect the assumption that the earlier the date that new tailings cannot be added to existing piles, the earlier those piles will be covered under current UMTRCA requirements. The costs of these alternatives are attributable to (1) the increased cost of final cover under current UMTRCA requirements caused by incurring these costs sooner, (2) the cost of pile capacity replacement where current useable capacity was eliminated by the work practice requirements, and (3) the cost of interim covers where considered. EPA invites comment on the extent to which the timing of UMTRCA requirements should be factored into the decision-making associated with the choice of a control option.

VII. Miscellaneous

A. Docket

The docket is an organized and complete file of all information considered by EPA in the development of this proposed standard. The docket allows interested persons to identify and locate documents so they can participate effectively in the rulemaking process. It also serves as the record for judicial review.

Transcripts of the hearings, all written statements, the Agency's response to comments, and other relevant documents will be placed in the docket and will be available for inspection and copying during normal working hours.

B. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this rule is not a major rule as defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be less than $100 million per year. Also, it will not cause a major increase in costs or prices for any geographic region. Further, it will not result in any significant adverse effects on

competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Under Executive Order 12291, this proposed rule was submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response to those comments are included in the docket.

C. Paperwork Reduction Act

The proposed rule does not impose any reporting or recordkeeping requirements on operators or unranium mills tailings piles. (However, if the interim control alternative is selected, there will be reporting and recordkeeping requirements and Form SF 83 will be submitted to OMB.)

D. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published.

However, section 604(b) of the Regulatory Flexibility Act provides that section 603 "shall not apply to any proposed . . . rule if the head of the Agency certifies that the rule will not, if promulgated have a significant economic impact on a substantial number of small entities."

EPA believes this proposed rule will have little or no impact on small business because the total costs associated with the standards will have relatively little impact on the total cost of producing uranium oxide.

For the preceding reasons, I certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 61

Air pollution control, Hazardous materials, Asbestos, Beryllium, Mercury, Vinyl chloride, Benzene, Arsenic and Radionuclides.

Dated: February 14, 1985.

Lee M. Thomas,

Administrator.

PART 61—[AMENDED]

It is proposed to amend Part 61 of Chapter 1 of title 40 of the Code of Federal Regulations as follows:

1. The authority Citation for Part 61 continues to read as follows:

Authority: Secs. 112 and 301(a) Clean Air Act, as amended [42 U.S.C. 7412, 7601 (a)].

2. By adding a new Subpart W to read as follows:

Subpart W—National Emission Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings

Sec.

Subpart W—National Emission Standard for Radon-222 Emissions From Licensed Uranium Mill Tailings

§ 61.250 Applicability.

This subpart applies to licensed sites that manage uranium byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.

§ 61.251 Definitions.

As used in this subpart, all terms not defined here shall have the meaning given them in the Clean Air Act or Subpart A of Part 61. The following terms shall have the following specific meanings given below:

(a) "Covered" or "reclaimed" means to cover with earth sufficient to meet Federal standards for the management of uranium byproduct materials pursuant to section 84 of the Atomic Energy Act of 1954, as amended.

(b) "Dewatered" means to remove the water from recently produced tailings by mechanical or evaporative methods such that the remaining water does not exceed 30 percent by weight.

(c) "Licensed site" means the area contained within the boundary of a location under the control of persons generating or storing uranium byproduct materials under a license issued pursuant to section 89 of the Atomic Energy Act of 1954, as amended. This includes such areas licensed by Agreement States, i.e., those States which have entered into an effective agreement under section 274(b) of the Atomic Energy Act of 1954, as amended.

(d) "Liner" means the material placed in the bottom and sides of a waste management area. This material must meet the requirements of 40 CFR Parts 264.220, 264.221, 264.300, and 264.301.

(e) "New tailings" means uranium tailings produced after the promulgation of this rule.

(f) "Single cell impoundment" means a method of tailings management which uses a large lined impoundment designed to contain all tailings generated during the lifetime of the mill. At the end of the mill life the impoundment is actively dewatered by means of pumps or allowed to air dry, and immediately reclaimed.

(g) "Phased disposal" means a method of tailings management and disposal which uses lined impoundments, no greater than 20 acres in area, which are filled, dried, and immediately reclaimed to Federal standards in series.

(h) "Continuous disposal" means a method of tailings management and disposal in which tailings are dewatered by mechanical methods immediately after generation. The dried tailings are then placed in trenches or other disposal areas and immediately reclaimed.

(i) "Uranium byproduct material" or "tailings" means the wastes produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. Ore bodies depleted by uranium solution extractions and which remain underground do not constitute byproduct material for the purposes of this subpart.

§ 61.252 Standard.

[Note.—A final rule will be made by selecting one of the various alternatives or combination of alternatives placed in each of the brackets.]

(a) Owners or operators of licensed uranium mill sites subject to this subpart shall process new tailings by [single cell impoundment; phased disposal; continuous disposal]. An exception is granted to new tailings added to existing piles as allowed by paragraph (b) of this section.

Alternative 1

[(b)(1) Owners or operators of licensed uranium mill sites subject to this subpart shall not add new tailings to any existing tailings pile after the effective date of this paragraph. For existing tailings piles, owners or operators shall begin negotiating a reclamation plan and an agreement to implement the plan with the Nuclear Regulatory Commission within one year of the effective date of this subsection. The effective date of this subsection shall be [at promulgation of this rule; three (3) years from May 1, 1986; eight (8) years from May 1, 1986; thirteen (13) years from May 1, 1986; or indefinite].

[(2) An exception with regard to continued use of an existing tailings pile may be granted upon petition to the Administrator provided the existing tailings pile has an impermeable liner.]

Alternative 2

[(b)(1) Owners or operators of licensed uranium mill sites subject to

this subpart shall not add new tailings to any existing tailings pile after the effective date of this paragraph. For existing tailings piles, owners or operators shall begin negotiating a reclamation plan and an agreement to implement the plan with the Nuclear Regulatory Commission within one year of the effective date of this subsection. The effective date of this subsection shall be [at promulgation of this rule; three (3) years from May 1, 1986; eight (8) years from May 1, 1986; thirteen (13) years from May 1, 1986; or indefinite].

[(2) An exception with regard to continued use of an existing tailings pile may be granted upon petition to the Administrator provided the existing tailings pile has an impermeable liner.]

(3) Owners or operators of existing tailings piles shall add an interim cover by May 1, 1987. This interim cover shall consist of no less than [one-third (0.33) meter of earth on all dry areas on top of the pile; one (1) meter of earth on all dry areas on top of the pile and on the sides of the piles where sides are constructed of tailings sands.]

§ 61.253 Recordkeeping and reporting requirements.

There are no recordkeeping or reporting requirements associated with §§ 61.252(a) and 61.252(b), alternative 1, of this subpart. Section 61.252 (b), alternative 2, has the following recordkeeping and reporting requirements:

(a) Records of the application of interim covers required under § 61.252 (b), alternative 2 shall be maintained as described below:

(1) A current map of each tailings pile showing the locations of dry, wet, and ponded areas and the interim covers.

(2) A record of interim cover applied including depth, approximate moisture content, date of application, location of application.

(3) A record of past (last 5 years) operations that placed tailings on the pile.

(4) A record of inspections made to insure the integrity of the interim cover.

(b) An owner or operator of an uranium mill site subject to the requirements of § 61.252(b), alternative 2 shall submit a certification to the Administrator by May 1, 1987, and annually thereafter. This certification shall be based on information concerning the calendar year immediately preceding. The certification shall consist of a statement that the interim cover requirements of § 61.252(b), alternative 2, have been implemented.

If a waiver of compliance is granted, this certification is to be submitted on a date scheduled by the Administrator.

§ 61.254 Source reporting and waiver requests.

(a) Source reporting is not required since the information is a matter of public record for licensed uranium mill sites.

(b) An owner or operator of an existing uranium mill site (i.e., existing source) unable to operate in compliance with the standard prescribed under this subpart may request a waiver of compliance with such standard for a period not exceeding two years from the effective date. Any request shall be in writing and shall include the following information:

(1) The reasons for requesting the waiver;

(2) A schedule for achieving compliance with this subpart, including the steps which will be taken to come into compliance and a date by which each step will be achieved; and

(3) Interim emission control steps that will be taken during the waiver period.

(c) Changes in the information provided under paragraph (a) of this section shall be provided to the Administrator within 30 days after such change, except that if changes will result from modification of the source, as defined in § 61.02, the provisions of §§ 61.07 and 61.08 are applicable.

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S.J. Res. 150/Pub. L. 99-248

To designate the month of March 1986 as "National Hemophilia Month". (Feb. 18, 1986; 100 Stat. 11; 1 page) Price: $1.00

S.J. Res. 231/Pub. L. 99-249

To designate the period commencing January 1, 1986, and ending December 31, 1986, as the "Centennial Year of the Gasoline Powered Automobile". (Feb. 18, 1986; 100 Stat. 12; 1 page) Price: $1.00